UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

IN RE:	)	
	)	
Nancy Rojas-Torres,	)	Bankruptcy #15-40265 (CEC)
	)	
Debtor.	)	
______________________________	)	

TRANSCRIPT OF:
ORDER SCHEDULING STATUS CONFERENCE AND CONFIRMATION HEARING. ORDERED, PARTIES HERETO SHALL FILE A JOINT PRE-TRIAL ORDER USING THE FORM ORDER AVAILABLE ON THE COURT'S WEBSITE. (RE: RELATED DOCUMENTS(S) AMENDED CHAPTER 11 PLAN FILED BY CREDITOR EMPIRE ASSETS GROWTH, LLP, AMENDED DISCLOSURE STATEMENT FILED BY CREDITOR EMPIRE ASSETS GROWTH, LLP).
MOTION FOR RELIEF FROM STAY
ORDER SCHEDULING STATUS CONFERENCE FOR THE PURPOSE OF DETERMINING AN APPROPRIATE SCHEDULE FOR THE PROPER ADMINISTRATION OF THIS CASE.
CONFIRMATION HEARING
MOTION TO OBJECT/RECLASSIFY/REDUCE/EXPUNGE CLAIMS: CLAIM NUMBER(S): 7-1. OBJECTIONS TO BE FILED ON 2/12/2016. FILED BY JULIO E. PORTILLA ON BEHALF OF NANCY ROJAS-TORRES.
BEFORE THE HONORABLE CARLA E. CRAIG
WEDNESDAY, FEBRUARY 17, 2016; 10:49 A.M.
BROOKLYN, NEW YORK

FOR THE DEBTOR:
By: Julio E. Portilla, Esq.
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New York, NY 10006

FOR EMPIRE ASSETS GROWTH, LLP:
THE CARLEBACH LAW GROUP
By: David Carlebach, Esq.
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FOR THE UNITED STATES TRUSTEE:
OFFICE OF THE UNITED STATES TRUSTEE
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SUMMATION BY:

THE COURT: You may be seated.

(Pause in proceedings)

THE CLERK: Calling the case of Nancy Rojas, Case 15-40265. Can we have appearances please?

MR. CARLEBACH: David Carlebach representing the Secured Creditor Empire Assets Growth. Good morning, Your Honor.

MS. WEINBERGER: Rachel Weinberger for the Office of United States Trustee, Your Honor.

MR. PORTILLA: Good morning, Your Honor, Law Office of Julio E. Portilla representing the Debtor, Nancy Rojas.

THE COURT: Okay. So let's start with the objection to claim. Okay, so if -- let me make sure I understand your position, Mr. Carlebach, and I believe, if I am understanding correctly, your position is that the amount of the Creditor's claim is now as reflected in the payoff statement on Exhibit G of your papers, is that correct?

(Lender's Exhibit-G previously marked for identification)

MR. CARLEBACH: Yes. Yes.

THE COURT: Okay. So I will hear anything from either of you that you want to say that isn't in the record. So I guess I will start with Mr. Portilla. That you have not already written down.

MR. PORTILLA: At this point, Your Honor, whatever is on the file is on the record --

THE COURT: Okay. All right.

MR. PORTILLA: -- I have no further to add.

THE COURT: Okay.

MR. WEINBERGER: Yeah, our position is in the papers.

THE COURT: Okay. Okay. So Mr. Carlebach, I conclude that -- I'm going to direct that you make the following -- provide the following additional information. I conclude I think based upon Mr. Portilla's submissions that enough questions had been raised to rebut the presumption that attaches when a proof of claim is filed. So I'm going to ask you to provide the following information to substantiate the numbers reflected on Exhibit G. Okay. So with respect to the interest, I would like to see a calculation that breaks it down by -- I want you to show me how you got to the per diem and how -- what number of days you multiplied it by and I want to see all the numbers, okay, because I tried backing in the some of these numbers and didn't -- wasn't able to come up with the -- I wasn't able to decode it and so I don't think I should be put to that task of trying to back into your numbers to understand where you're coming from. So I want you to show, for example, with interest from 8/1/2012 through 8/31/2014, it's an -- by the way, I think your -- I think this is a typo. I don't think you mean 8/31/2014, do you, on Exhibit G? I think you must mean something like some date in February 2016.

MR. CARLEBACH: That does (indiscern.) the papers, Your Honor, if you could just give me one second.

THE COURT: I think that's -- I assume that's a typo because it doesn't make any sense because it's more than the amount that's reflected on your proof of claim which goes through 1/22/2015. So in other words, interest from 8/1/2012 through 8/31/2014 would not be more than interest from 8/1/2012 through 1/22/2015. So that must be a mistake. And I don't know what significance 8/31/2014 would have anyway.

MR. CARLEBACH: Yeah. No, that -- that does look like a typo, Your Honor.

THE COURT: And it -- but it's -- and it's a typo of it's typo or it's a mistake that you carried through.

MR. CARLEBACH: Yeah. So understood. What -- what -- I mean what happened there was -- I gave the Court all the pay off letters that had been issued in this entire loan. Which I did some research, fine. And there was an attorney, you know, when the loan was taken over, who did a little -- they used of different format and that's kind of what created the confusion, you know, you just stated that exact format used by the (surprise servicer), PNC I think it would have been just a progression -- would have been clearer.

THE COURT: Well, this isn't a question of format, it’s a question of -- you’re talking about the unpaid principal balance. I assume that’s the current unpaid principal balance, correct?

MR. CARLEBACH: That’s correct.

THE COURT: Okay. Which is also -- it's the same, and I don’t think there’s any dispute about the unpaid principal balance. It seem -- that seems to be reflected in a consistent way throughout the documentation. It’s the same unpaid principal balance as it was at the time of default.

MR. CARLEBACH: That’s correct, Your Honor.

THE COURT: Okay.

MR. CARLEBACH: The principal balance does not change.

THE COURT: Okay. So I want you to break down the interest for me. I want you to show -- okay, principal balance x .063, you know, is it a 366 days of interest that you’re calculating? Anyway, I want you to break it down for me.

MR. CARLEBACH: Understood.

THE COURT: Okay. The same thing with the default interest, the same thing with the late fees, which is -- so in other words, I don’t know how many days of late fees that is, at what amount. How am I supposed to know that? Do I have to do research to go through and find -- figure out what your late fees -- what your late fee is and then divide it and figure out how many days you're talking about?

MR. CARLEBACH: I understand, Your Honor.

THE COURT: Okay.

MR. CARLEBACH: I mean, this -- these things weren't really -- I mean --

THE COURT: Well, I don't care. I want to -- I want to understand this.

MR. CARLEBACH: Well, I'm just pointing out --

THE COURT: And anyway it's different.

MR. CARLEBACH: I'm just pointing out that the Debtor had these -- the original pay off letters were part of the state court litigation. The Debtor had those and --

THE COURT: Does that make -- does the fact that the Debtor had them make them set in stone somehow? Does that make them right?

MR. CARLEBACH: There were court rulings, you know, effectively of, you know --

THE COURT: No, I don't think the Court of -- you know, I'm sorry to cut you off but I did read that the decision on summary judgment and the Court was -- all the court had to determine was whether a judgment of foreclosure should be entered. They expressly did not fix the amount of the foreclosure judgment.

MR. CARLEBACH: Well, I understand.

THE COURT: So they didn't have to address how many months of late fees or whatever they -- or how many -- how much -- how many months were in default. They just had to find that there was a default. And that's all. That's, I think that is all was -- that was determined in the state court opinion, that there was a default and therefore judgment of foreclosure should be entered. So okay. So late fees, same thing. Property inspections, what's that? And who -- give me -- show me -- if you can't find the bill, show me the -- show me at least a line item showing that it was paid by the two -- I assume it was paid by the prior servicer.

MR. CARLEBACH: That actually may have been an inspection we did while we were purchasing the loan, so --

THE COURT: Well, is that something you get to charge them for?

MR. CARLEBACH: I think so.

THE COURT: Why would that be?

MR. CARLEBACH: Under the mortgage we have a right to charge them for all these things, so --

THE COURT: Well, if this is an inspection you did prior to the time you bought you loan why would that be charged to them?

MR. CARLEBACH: It was after we bought the loan. Oh, it was, I -- I misspoke, he said so.

THE COURT: Okay. So show me the bill for that and show me where in the mortgage it says you're entitled to charge them for it, okay. Same thing. A pre-payment premium you don't get that in this context, I don't think. There is no pre-payment premium. You are not being paid. If these were a situation where you were being paid in full you might be able to charge a pre-payment premium, but you're not being paid.

MR. CARLEBACH: Well, I mean, the purpose of that -- I mean, the pre-payment premiums are always included in payoff letters. The point is --

THE COURT: Right. But you're not being -- but this -- in this context you're not being paid off. Nobody -- if these were a situation where your loan is being treated as unimpaired under -- if they were seeking to confirm a plan that treats your loan as unimpaired by paying in full the amount that is owed then you would be entitled to -- then there would be an argument that you'd be entitled to a pre-payment premium but that's not what's happening here.

MR. CARLEBACH: And again, this payoff letter -- I guess we didn't proper footnote on that. I just don't --

THE COURT: I am disallowing that right now. I'm telling you. That's not part of what I'm going to include because you're not being prepaid so you won't get a prepayment premium.

MR. CARLEBACH: Okay.

THE COURT: You're not being paid at all.

MR. CARLEBACH: I just don't want it be construed as a waiver, to the extent that someone would take this payoff letter and wanna cut us a check saying that wasn't included.

THE COURT: Don't -- I'm not asking you to -- what I'm asking you -- what I'm directing you to do if you want me to allow any portion of your proof of claim is to supplement your submission here. You can call it a payoff letter. You can call it whatever you want to call it. Okay. Your prepayment premium, okay. Then advances -- I would like to see the back-up for that. I don't know what they're advances for. Advances attorney up to 214 insurance tax. I don't know what that means. Maybe it's -- maybe there's meant to be semi-colons between 214 and insurance and tax.

MR. CARLEBACH: Yeah, I think that the attorney's fees up to 24 -- attorney did -- it's the attorney's fee is up to 214 which I believe are about 31,000 and then insurance and tax, a prepaid insurance and tax. And that's all of the original payoff letters.

THE COURT: Okay.

MR. CARLEBACH: On top of the attorney's fees equaled the total prepaid advances of 39,387.

THE COURT: Okay. So I would like to see the breakdown for that and to show -- I want to see the back up for it. What's the evidence that attorney's fees and that --

and the amount that you assert were paid and what's the evidence for the insurances? There's got to be something, something that shows, something in the record of the prior servicer that shows that this amount was paid. I assume.

MR. CARLEBACH: I mean, we have -- what we have are their payoff letters where they say prepaid legal and they show the progression. There's three payoff letters from the prior servicer. They has a prepaid legal of 8,000, 18,000 and 31,000 as the case progressed. I don't have their bills but --

THE COURT: Prepaid legal? What does that mean?

MR. CARLEBACH: Prepaid rate -- well, another word repaid. Another word, this is the amount they paid their attorneys.

THE COURT: Okay.

MR. CARLEBACH: It wasn't an outstanding bill but it was money that the servicer had gone out of pocket --

THE COURT: Okay.

MR. CARLEBACH: -- to pay the attorney's fees.

THE COURT: So you didn't say prepaid legal you said repaid legal?

MR. CARLEBACH: Right. I forget the exact words that's used in the letter but it's -- the point is it's money that was spent by the servicer for attorney's fees.

THE COURT: Okay. Is there any documentation that other than the payoff letter?

MR. CARLEBACH: I don't have any bills. I -- to get those bills from the servicer would probably be arduous and difficult but I -- just, you know, I think that those bills, those payoff letters are certainly some evidence that those are --

THE COURT: Okay. But are they -- what are they? In what respect are they evidence? Are they the business records?

MR. CARLEBACH: Absolutely.

THE COURT: Do we have anyone who can authenticate them and --

MR. CARLEBACH: I do have a witness who can authenticate them. He's not --

THE COURT: As business records of the prior servicer?

MR. CARLEBACH: Well, he could -- it's the -- I'd have to ask him whether or not. I mean it's the attorney who was -- I believe --

(Pause in proceedings)

MR. CARLEBACH: He was --

(Pause in proceedings)

MR. CARLEBACH: Yeah, I mean, I could, you know, we know who counseled for their, you know, Westerman Ball was representing the prior servicer. I know their attorney. If we need to bring him into Court and have him testify that those were bills he submitted and was pay, we could do that. I mean --

THE COURT: Well, you could provide that by affidavit, as far as I’m concerned. But this, you have one lump sum and the specific amount that lumps together a number of different things for which there is no substantiation.

MR. CARLEBACH: We can definitely back that, you know, I know where it is, you know --

THE COURT: There was some argument about whether the taxes had -- there were tax advances included or weren’t they included. They can’t -- if 30 -- what did you say 36 of that was taxed, was legal fees?

MR. CARLEBACH: Of the --

THE COURT: How much of the 39 did you say was legal fees?

MR. CARLEBACH: Of the 39, I believe about 31 was legal and that between 31 and 39 is insurance and tax.

THE COURT: Okay. So there can’t be that much tax that's in there.

MR. CARLEBACH: That’s correct. I think I believe the insurance was a bigger number.

THE COURT: Okay. All right. So I want you to provide me with documentation that reflects that. Presumably there’s some -- you have some breakdown of it or you’re saying that you just -- all you have is that one gross number? So you're telling me --

MR. CARLEBACH: There were a total of three payoff letters that were issued, started in the mid 2013, the mid 2014 that you could see a progression of payoff letters, they're all in our reply.

THE COURT: Yeah. Which I am not going to spend my time trying to parse through your payoff letters to figure out what your claim is. I expect you to explain it to me.

MR. CARLEBACH: No, understood. I mean, we were responding to an objection about legal fees and I was merely demonstrating that all these legal fees were actually already in the possession of the Debtor --

THE COURT: But --

MR. CARLEBACH: -- in State Court filings. These were not -- this wasn't surprises that were --

THE COURT: But the fact that they were in the possession of the Debtor in state Court filings doesn't mean that they were correct, but that was -- that that was -- that that was a correct amount or that it was substantiated.

MR. CARLEBACH: Again, they -- Your Honor's point is well-taken. We can -- I'm merely saying that the way it was fashioned in their objection it appeared as if they were challenging the very existence of legal fees --

THE COURT: Okay. But --

MR. CARLEBACH: -- pre-petition and --

THE COURT: Okay. But let's just go back to the question that I'm interested in which is to have a break down and substantiation of this number.

MR. CARLEBACH: That's fine.

THE COURT: So you can get Westerman Ball to give you the -- an affidavit with the legal fees and you can -- presumably there is some evidence of the amount of the -- some bill for the insurance and some tax bill somewhere that would show what was paid. The same thing with the attorney's fees from 214 to 115 is the -- those have been your firm or they -- what firm is that?

MR. CARLEBACH: No, those were, I think it was Berkman Henoch was --

THE COURT: Okay, is there a bill for that, that reflects that?

MR. CARLEBACH: We can get the bill for that as well.

THE COURT: Okay. So show me the bill and then I have your -- an appraisal fee, this is the fee to your -- the appraisal -- for the appraisal that you got?

MR. CARLEBACH: Yes.

THE COURT: $9,100 seems very high to me. In my -- and I have, you know, particularly for a guy who didn't do an interior inspection.

MR. CARLEBACH: It was -- it's the appraiser plus his time for coming here to testify -- the report and --

THE COURT: So how much time did -- how much did he charge?

MR. CARLEBACH: And preparation. There was a significant amount of prep and my office going through all the issues.

THE COURT: Okay.

MR. CARLEBACH: So it added up to a number. That's what this is the amount.

THE COURT: Okay.

MR. CARLEBACH: We can break that down.

THE COURT: Okay. That would be good, if you could do that.

MR. CARLEBACH: Okay.

THE COURT: And then I have the breakdown on bankruptcy legal. So I'm going to direct that you file that within two weeks, can you do that?

MR. CARLEBACH: Yes.

MR. PORTILLA: Your Honor, can I ask something?

THE COURT: Excuse me?

MR. PORTILLA: May I say something?

THE COURT: Let me just finish speaking with Mr. Carlebach.

MR. PORTILLA: Thank you.

THE COURT: Do you have any questions?

MR. CARLEBACH: I do not, Your Honor.

THE COURT: Okay. Mr. Portilla?

MR. PORTILLA: Your Honor, I just want to point out maybe get some clarity for Mr. Carlebach in regards to the prepaid legal fees which --

THE COURT: No, not prepaid. Repaid, I think.

MR. PORTILLA: Repaid legal fee.

THE COURT: The legal fees.

MR. PORTILLA: I would like to see a breakdown at how the -- how those legal fees were incurred because those fees weren't paid prior to the foreclosure action was commenced. And it seem there's a significant number of 18,000 and change.

THE COURT: Which ones are you -- what are you talking about right now?

MR. PORTILLA: With regards to legal fees that were -- that Mr. Carlebach refers to in the payoff letters.

THE COURT: Okay. Which one -- which legal fee are you -- but there are -- right now I'm looking at Exhibit G. Which line item of legal fees are you taking issue with on this? There are three line items. Advances, that includes legal fees, attorney fees from 2/14 to 1/15 and bankruptcy legal which I assume is not what you're talking about.

(Pause in proceedings)

THE COURT: Okay. So I'm told that based upon the State Court docket my -- that was included I guess in the -- one of the submissions here. Which one was it? Mr. Portilla's submission? Yeah. August 2013 is when the foreclosure action was commenced. So I guess your -- the attorney's fees that are from 2/14 to 1/15 are not pre-foreclosure.

MR. PORTILLA: And the payoff letters that was submitted as Exhibits D and E of Mr. Carlebach's papers dated July 16th, 2013 and December 16th, 2013. So they are pre-foreclosure that at the very least --

THE COURT: Which -- excuse me, which ones are pre-foreclosure?

MR. PORTILLA: The legal fees that are listed in the payoff letters that was submitted by PNC.

THE COURT: Okay. I don't know what you're talking -- I don't know which payoff letters you're talking about.

MR. PORTILLA: I'm referring to the (indiscern.). It's Exhibit --

THE COURT: I'm just looking at -- I'm looking at Exhibit G. So what -- that's what I'm going to be working off of. So which Exhibit -- which line item reflects in your view pre-foreclosure action legal fees? Because I'm going to be asking Mr. Carlebach to break that down. If you can provide the bills that would be very helpful.

MR. CARLEBACH: There’s one that’s is pre-foreclosure which is July 16th, 2013 and it's got a legal fee of $8,000.

THE COURT: Okay.

MR. CARLEBACH: And what they filed it on --

THE COURT: Okay. So you’ve seen the bills?

MR. CARLEBACH: I haven’t seen the bills. I’ve seen the payoff, the payoff letter that he’s referring to. It says repaid by servicer hyphen legal, 8,000 something.

THE COURT: I see. And this is --

MR. CARLEBACH: And that’s on July 16th of 2013.

THE COURT: Okay.

MR. CARLEBACH: That’s Mr. Portilla’s issue that it was before the foreclosure was filed. Presumably if the foreclosure was filed in August, there was some work that went into it before they actually filed it, and, you know, we’ll happy to get that bill but I’m sure there were, you know, I don’t see that as being -- it’s not a major bill. It’s not a huge bill. It’s $8,000 and probably went into preparing the compliant. It’s a relatively detailed complaint and I don’t know what other enforcement --

THE COURT: Right.

MR. CARLEBACH: -- action they took before they actually filed.

THE COURT: It isn't hard to imagine you could incur that much in legal fees before foreclosure action is commenced.

MR. CARLEBACH: There's pendences involved -- there's all -- yeah, I mean, that's not --

THE COURT: But to the extent that you can get the bills that would be helpful. You may be able to get them from Berkman Henoch and Westerman Ball. Okay. Is there anything else you want to -- any other point you want to make, Mr. Portilla?

MR. PORTILLA: No, Your Honor.

THE COURT: Okay. Okay, so with that substantiation I will make -- I'll be in a position to rule on the objections to your proof of claim. So now we're going to go into the evidentiary hearing. So Mr. Portilla, call your first witness.

MR. PORTILLA: Your Honor, I just want to begin by saying that I do have the certified interpreter here with me. Speaking with my client outside and prior to this hearing she does not want to testify. She doesn't feel comfortable testifying. As a result I'm just going to go ahead with my appraiser.

THE COURT: Okay. Call your first witness.

MR. PORTILLA: Your Honor, at this time I call Armand Amzallag.

ARMAND AMZALLAG, Debtor'S WITNESS, SWORN

THE CLERK: Please be seated. And can you please spell your name for the record and give your address?

MR. AMZALLAG: Armand Amzallag, A-R-M-A-N-D, A-M-Z-A-L-L-A-G, 345 East, 80th Street, New York, New York 10075.

THE COURT: Go ahead, Mr. Portilla.

VOIR DIRE

BY MR. PORTILLA:

Q. Good morning, Armand.

A. Good morning.

Q. Can you state your occupation for the record?

A. Yes, I'm a real estate appraiser in New York, Certified general appraiser.

Q. What is your educational background?

A. I have been -- I have a Master in Finance and then I became an appraiser.

Q. What -- did attend a university?

A. Yes, I did.

Q. What university did you attend?

A. It's University of Dauphine. It's in France in Paris.

Q. Do you have any professional affiliations?

A. I'm sorry?

Q. Do you have any professional affiliations?

A. Yes. With the Appraisal Institute. I am a candidate.

Q. Have you taken any courses in regards to your occupation

as an appraiser?
A. Yes. I took many courses that we are required to take. Lately it's the 28-hour continuing education. I took like you start self-comparison, income capitalization approach, (indiscern.) cost approach and many others.
Q. Do you currently have any other professional licenses?
A. Yes. I'm real estate broker.
Q. Is your license current?
A. Yes.
Q. Can you please describe what is a real estate appraiser?
A. It's -- we are -- (indiscern.) question again?
Q. Can you please describe exactly what is a real estate appraiser? What actually do you do?
A. Real estate appraiser there are setting market value on the properties.
Q. Okay. Are you a licensed real estate appraiser?
A. Yes, I am.
Q. When did you get licensed?
A. Since the beginning of the licensing, I think it was 2001.
Q. Okay. And prior to that were you performing any appraisals?
A. Yes, I did.
Q. And when did you start performing and preparing appraisals?

A. Around 1988.
Q. And do you have experience appraising commercial properties in the City of New York?
A. Yes, I do.
Q. About how many properties you say have you appraised in the City of New York?
A. In New York State, like, in the five boroughs around between 5,000 and 6,000 appraisals including residential.
Q. Okay. Are these appraisals -- do you do these appraisals, are these actual appraisals that you conducted?
A. Actual appraisals.
Q. Have you ever testified as an expert appraiser in any type of proceedings?
A. Yes, I did.
Q. How many times?
A. On the last few years, I would say about five, six times.
Q. What kind of training or education you say you had thus far as an appraiser?
A. Well, the education is that I've been taking classes over the years concerning all this sales comparison and income capitalization approach and others --
Q. Are you still taking these type of classes in order to enhance your certification?
A. Yes, I do. Like every two years we are required to take this 28 hours continuing education including the

(indiscern.).

Q. And are you current with your re-certification requirements --

A. Yes, I am.

Q. -- as an appraiser?

MR. PORTILLA: Your Honor, at this time, unless your honor has any further questions, I want to tender Mr. Armand Amzallag as a qualified expert as a real estate appraiser.

THE COURT: Any objection?

MR. CARLEBACH: I would just like to briefly voir dire the witness.

THE COURT: Yes, you may.

VOIR DIRE

BY MR. CARLEBACH:

Q. Mr. Amzallag, how many times did you say you were qualified as an expert?

A. The last few years, about five, six times.

Q. During the last few years?

A. Right.

Q. And prior to that?

A. Prior to that, I was doing appraisals for divorces and bankruptcy but they will always settle before the hearing.

Q. And were these qualifications in federal or state court?

A. It's mostly state.

Q. State court?

A. Yeah.
Q. Your appraisal that you prepared today was that for court? Was that a appraisal that was prepared specifically for Court?
A. Yes.
Q. And you permitted it to be used in Court?
A. Yes.
Q. And what research did you do to -- in terms of performing the appraisal where did you get the information from?
A. From the market. I research the market and the subject and then I research the sales that were comparable to the subject building and also rentals of other apartments in the neighborhood.
Q. With respect to the income at the property in question, where did you get the information about the income?
A. The income I get them from the owner.
Q. Strictly from the owner?
A. Mostly from the owner.
Q. And that was what she told you orally?
A. Yes, because I tried to get the income from the DHCR but there wouldn't give the information except to the owner. I was not able to get that. And then I got -- received some rent from the receiver and the receiver he had the column somewhere and there were very similar to the rent that I used in my report.

Q. Did it ever come to your attention the -- to give a C -- a DHCR report?
A. Well, as I mentioned to you, I couldn't get the DHCR report and --
Q. Are you in Court at the last hearing on this matter?
A. Yes.
Q. And it didn't come to your attention that there was a DHCR report that was in evidence?
A. No. I received a copy of the DHCR after I did my report.
Q. Well, don't you think you should have modified your report based on what the DHCR was?
A. Well, I haven't been asked to do that so I'm not sure, but the DHCR --
THE COURT: I'm sorry. Can you repeat your answer because I didn't quite understand you.
A. I have not been asked to modify my report --
THE COURT: Okay.
A. -- based on the rents from DHCR.
BY MR. CARLEBACH:
Q. But do you agree that in the first instance the DHCR would be more a accurate method of determining income than just getting a verbal recitation from the owner?
A. Well, if the DHCR was filed -- if the rent were filed by the owner with the DHCR I would assume that both of them are the same.

Q. But in the first instance you said that if you had been able to get the DHCR that's where you would have gone, but you couldn't because you didn't have the authority?

A. Right.

MR. CARLEBACH: Your Honor, I have no objection to Mr. Amzallag to be qualified as an expert.

THE COURT: All right. Okay. Go ahead then, Mr. Portilla.

DIRECT EXAMINATION

BY MR. PORTILLA:

Q. Armand, what was your assignment in connection with this matter?

A. I was asked to set the value on the property at 7001 34th Avenue in Jackson Heights.

Q. And how did you record your data and findings?

A. I looked at the -- in the market and I find some sales that were very similar to the subject property and also concerning the income I searched for residential apartments that were rented in the area and I used that as comparables.

Q. And did you prepare an appraisal report?

A. Yes.

Q. Do you have a copy with you?

A. Yes.

MR. PORTILLA: Your Honor, at this time I want to submit the appraisal report that was submitted by my witness as Debtor's Exhibit 1?

(Debtor's Exhibit-1 marked for identification)

THE COURT: Any objection?

MR. CARLEBACH: No, Your Honor.

THE COURT: Okay. Without objection then it's received, this Debtor's 1.

(Debtor's Exhibit-1 admitted into evidence)

MR. PORTILLA: Your Honor, do you have a copy?

THE COURT: I do. Thank you. It was filed, was it not?

MR. CARLEBACH: Yes.

THE COURT: Document 79. That's what I'm looking at.

BY MR. PORTILLA:

Q. Mr. Armand, was the appraisal report that's submitted into evidence as Debtor's Exhibit 1 was it prepared in accordance with the standard of professional appraisal practice and core professional ethics of the Appraisal Institute?

A. Yes, I did.

Q. What was the market value of the subject building that you listed in the appraisal report?

A. As of August 20th, 2015 it was a million three.

Q. And when did you inspect the property?

A. I inspected the property in August 20th, 2015.

Q. What was -- where is the property located?
A. At 7001 34th Avenue in Jackson Heights, New York.
Q. Did you personally visit the property?
A. I did an exterior inspection and inspection also of the common areas.
Q. Who gave you access?
A. The owner.
Q. Did you take pictures?
A. Yes, I did.
Q. Did you sign and certify this appraisal report?
A. Yes, I did.
Q. Can you give this court a definition, what it means, what is definition of fair market value?
A. The market value is the most probable price which a property would bring with an open market.
Q. What are the approaches used to determine the fair market value of a property?
A. I use the sales comparison approach and the income capitalization approach.
Q. When you say you used both of those two approaches, you used for this particular appraisal?
A. Yes, I did.
Q. Are the sales that you used to prepare your report are they these the same sales that the lenders appraiser used?
A. No.

THE COURT: Your Honor, turning to your attention, page 28 of the appraisal report entitled building sales and (indiscern.).

BY MR. PORTILLA:

Q. Are the comparables that you used in your report are the data the same when compared to your lender's appraisal?

A. No.

Q. What is the difference?

A. Well, they are more recent than the other appraisal and two of them -- two of the sales that I used are in Jackson Heights very close to the subject property.

Q. Turning your attention to page 20 of the grid.

THE COURT: Page 20, did you say?

MR. PORTILLA: 28, I'm sorry, Your Honor 28.

THE COURT: Okay.

BY MR. PORTILLA:

Q. When analyzing comparable #1, comparable #1 is located where?

A. It's located at 3105 71st Street in Jackson Heights.

Q. Same neighborhood as the subject property, correct?

A. Yes.

Q. Okay. When was the sell date for that particular property?

A. It was in March 19, 2015.

Q. How important is the building size in square footage in

order to determine the value of a subject -- of a particular building?
A. Well, it's very important because a larger building, of course, would get higher income and the higher price per square foot.
Q. And when comparing the subject building to comparable #1, is there much of a difference in terms of square foot?
A. Not too much. It's only maybe 200 square feet difference.
Q. And what was the sales price for that building?
A. 1,530,000.
Q. And what was the unit price for that building?
A. It was $320.75.
Q. When comparing this sale to comparables listed by lender's appraisal is this a higher number?
A. Yes, it is.
Q. Looking at comparable #2, where is this building located?
A. 72 -- 7011 34th Avenue, also in Jackson Heights.
Q. And when was this building sold?
A. In July 7, 2015.
Q. And what is the building size, square footage of this building?
A. 4,590 square feet.
Q. It's the same square footage when comparing it to the subject building, correct?

A. Yes, it is.
Q. How much did this building sale for?
A. A million four.
Q. And what was the price of the unit -- what was the unit price for the sale?
A. It's $305.01 per square foot.
Q. Going down to comparable #3, where is this subject building located?
A. 3911 65th Place, it's in Woodside. It's about five, six blocks away from the subject.
Q. Five, six blocks, so it's about a five or ten minute walk?
A. Something like that.
Q. And what was the sale date for this building?
A. It was May 1st, 2015.
Q. And how much does this building sell for?
A. A million, 250.
Q. And the unit price?
A. $260.42.
Q. Going on to comparable #4, where is this building located at?
A. 3234 48th Street. It's in Astoria. It's a little less than half a mile from the subject.
Q. And what was -- when was the sale of this building?
A. It was in June 23rd, 2015.

Q. How much did this building sell for?
A. 1,475,000.
Q. Going to comparable #5, where is this building located?
A. 2814 47th Street, it's in Astoria. It's also not too far. Maybe less than half a mile.
Q. And when was the sale for this building?
A. It's in June 15, 2015.
Q. And what was the square footage for this one?
A. It's 5,215.
Q. And it's sold for?
A. 1,240,000.
Q. Comparable #6, where is this building located?
A. 3721 59th Street. It's in Woodside. It's also maybe four, five blocks away.
Q. And when did this building sell?
A. November 10th, 2014.
Q. And it's sold for how much?
A. 1,200,000.
Q. So taking your grid in its entirety, does -- the buildings located in Jackson Heights --
A. Yes.
Q. -- sold at higher values, correct?
A. Right.
Q. You testified that you prepared -- you performed the appraisal in this building in August?

A. August 20th, yes.
Q. 2014, correct?
A. '15.
Q. I'm sorry, '15?
A. 2015, yes.
Q. And all these sales occurred prior to you preparing the report?
A. Yes.
Q. How did you come to find these comparables?
A. With the --
Q. How did you come to find these comparables?
A. From the market, I have a database which I checked and it gave me of all these sales.
Q. Did you view these comparables yourself?
A. I'm sorry?
Q. Did you go view these comparables?
A. Yes, I did. And I took pictures.
Q. When you say did you physically go to these buildings?
A. Yes, I did.
Q. On an average, how far are these comparables to the subject property in all?
A. They're only a few blocks away. I have in my (indiscern.) that was not included in the report but I see they are very close. I mean, the #4 is maybe the farthest, this maybe half a mile away.

Q. Do you remember reviewing the appraisal report presented to evidence by the lender's appraiser?
A. If he was --
Q. I'm sorry. Do you remember the report, the appraiser report, that was presented into evidence by the lender?
A. Yes.
Q. Did the lender's appraisal have any properties that are sold in Jackson Heights?
A. If I remember, yes. I think there was one sale that was in Jackson Heights. I think it was #4, 7216 34th Avenue.
Q. Comparable #4, correct?
A. Number 4, yes.
Q. And when you compared comparable #4 to the other properties that were used by the lender's appraiser, which had the highest value?
A. His sales that he used, it was this highest value and ours was like --
Q. I'm sorry. I'll re-ask the question. When comparing comparable #4 --
A. Yes.
Q. -- in the lender's appraisal --
A. Yes.
Q. -- to his other comparables, which had the highest value?
A. Number, sales #4.
Q. Number?

A. Number 4.
Q. Number 4.
A. The one in Jackson Heights.
Q. And #4 is located where?
A. In Jackson Heights.
Q. Same neighborhood where the subject building is located, correct?
A. Yes.
Q. Just to be clear. Did the lender's appraiser use any comparable, any other comparables in Jackson Heights besides comparable #4?
A. No. Just #4.
Q. When preparing your appraisal report and submitting these comparables how did each particular property -- strike. When comparables one through six that you used, how did the sale of those particular properties enter into your thinking and used and incorporate into your report?
A. It's mostly by the size of the property and so then I analyzed the sales by the unit price per square foot, and also on unit price per unit. All the buildings had the six units similar to the same footage to the subject.
Q. So the comparables you used they're all in similar size and structure?
A. Yes.
Q. They all have the same amount of apartments?

A. Yes.
Q. If the lender's appraiser would have used this comparable #4 as being close to market value, would the market value of the subject building be higher than his appraised value of 900,000?
A. Yes.
Q. What is the second approach you used in determining the value of this building?
A. The income capitalization approach.
Q. Okay. Mr. Carlebach asked you a question in regards to how did you obtain the income information. Do you recall that?
A. Yes. I received the information from the owner at the time of the inspection.
Q. And did you verify this information with the information received from the receiver?
A. No. Oh, yes, I did. And -- there is a column where -- all right, down the report from the receiver as of May 31st, 2015.
THE COURT: I'm sorry. What page is this?
A. May 31st, 2015. Oh, what page?
THE COURT: Page of the appraisal report?
MR. PORTILLA: Your Honor, we're right now on page 44.
THE COURT: Okay.

A. On the fifth page of this report from the receiver on May 31st, 2015.

MR. PORTILLA: One second.

THE COURT: Can you repeat that what you just said?

A. I received the --

MR. PORTILLA: This -- the witness is actually referring to the report that was filed by the receiver online at ECF.

THE COURT: Okay. Thank you.

BY MR. PORTILLA:

Q. How does the income approach help you understand if someone's willing to pay for a property?

A. Well, a potential purchaser, an investor, would base mostly his purchase decision on the income on the property and the expenses.

Q. And how does the net income of the property help an investor determine whether or not to purchase a particular property or not?

A. Well, if it's feasible and if the annual is higher than other property they would rather buy this property than other properties with a low income.

Q. Did you obtain the rent schedules?

A. Yes, I did.

Q. You testified earlier you obtained it from the Debtor, correct?

A. Yes.

Q. But it's also your testimony that you verified the rent schedules with the report that was submitted by the receiver?

A. Yes.

Q. You also was asked a question in regards to the DHCR report, do you recall that?

A. Yes.

Q. Do you recall being here listening to testimony in regards to this DHCR report?

A. Yes.

MR. PORTILLA: Your Honor, I would like to submit, it's already into evidence as Lender's Exhibit A, it's a DHCR report.

(Lender's Exhibit-A previously marked for identification & admitted into evidence)

THE COURT: It's already in evidence.

MR. PORTILLA: It's already in evidence. I'd like to give a copy to the witness.

THE COURT: You may do so.

A. Thank you.

BY MR. PORTILLA:

Q. Armand, can you please describe for the Court what I just handed to you?

A. Yes. This is DHCR report that was filed in -- or effective April 1st, 2014.

Q. Okay.
A. And it's -- it lists the rent of each apartment and the filing date was actually on August 4th, 2014.
Q. Okay. Based on this report, how old are these rents?
A. Usually when you filed with the DHCR for 2014 in New York you're filing with the rents of 2013.
Q. So is it safe to say that the rent listed in DHCR report and submitted as evidence by the Lender as Exhibit A, is it 2013 rental?
A. Yes.
Q. Looking at page 44 of your appraisal report --
A. Yes.
Q. -- Unit 1A, you list the rent at 822.68?
A. Yes.
Q. By the way, were you given any copies of leases?
A. Not all leases but I got a couple of leases, yes.
Q. The leases that were in Debtor's possession was given to you by my office, correct?
A. Yes.
Q. And you were able to verify these leases with whatever rent roll was given to you as well, correct?
A. Yes.
Q. Unit 1B which is occupied by the owner --
A. Yes.
Q. -- where did you get that 1 -- the 1,700 number from?

A. It is from the market and I compiled a few rent in the market. You see on page 45, 46 and 47. They are the few market rents.
Q. So go to page 45 of Debtor's Exhibit A, are all this comparables in west -- in Jackson Heights?
(Debtor's Exhibit-A previously marked for identification)
A. Yes.
Q. What was the average rent for these four comparables?
A. Four comparables.
Q. Listed on page 45.
A. I use 14 comparables and --
Q. I'm sorry, 14 comparables.
A. The average rent is $29.29 per square foot.
Q. And was it about a 1,953 per month, correct?
A. I'm sorry.
Q. The average rental income --
A. Oh, the average --
Q. -- for this 14 comparables came out to 1,953?
A. Yes. Leases per month, yes.
THE Court: Can I ask --
A. 1,953 per month.
THE Court: Can I ask a question? Were you able to -- did you know -- were you able to determine whether the comparable rentals that you were looking at were rent

controlled, rent stabilized or not regulated?
A. No, they are open market.
THE Court: They are all market rents?
A. All open market, yes.
THE Court: So how are they relevant to be rent roll of this building, which is a rent stabilized building, is it not? Am I correct that this is the rent stabilized building?
A. Yes.
THE Court: Okay. So why is it -- why did you compare the market rents to rents stabilized rents?
A. What I use is for the -- to set the market -- market rent of the owners. The owner's apartment.
THE Court: The owner's apartment, okay.
A. That's the owner's apartment.
THE Court: I see.
MR. PORTILLA: The owner didn't have a listed rent and the owner's apartment is not stabilized.
THE Court: Okay. So you were just confined to the owner's apartment?
A. Yes.
THE Court: Okay. Thank you. Sorry to interrupt.
BY MR. PORTILLA:
Q. So going down to Unit 2A, you list that rent as 1800, correct?
A. Yes.

Q. And you have a lease expiration of 3/31/2017?
A. Yes.
Q. Was that lease provided to you?
A. Yes.
Q. Okay. 2B, 1,544.95. This lease was also provided to you, correct?
A. Yes.
Q. And Unit 3A, 1,800 and that lease was also provided to you, correct?
A. Right.
Q. And 3B, 1,701.22, that also was provided to you, the lease?
A. Yes.
Q. And you relied on this data in order to perform the income approach in preparing your report, correct?
A. Right.
Q. Going back to the DHCR report, that was submitted into evidence as Lender's Exhibit A. Are these numbers valid anymore?
A. They are, however, they are two years older than the report. So the market is a little different than it usually --
Q. The market has changed?
A. Yes, it's changed and usually rent increases over the period between 2013 and 2016, '15. The rent stabilized

apartments have a set increase every year.

THE Court: So would you be able to take this -- these rents from 2013 and apply the increase and determine what the rents would have been in 2015?

A. We could, if there was no change in -- in the condition of the -- the unit because if you do some renovation of the apartment you're allowed to increase the rent of I think one fortieth of the -- the renovation.

THE Court: So you have to get permission from DHCR to do that? You have to file something with DHCR to do that?

A. Yes.

THE COURT: Thank you.

BY MR. PORTILLA:

Q. Did you have to get an operating analysis, expense analysis of the property? Did you also get an operating expense analysis for the subject property?

A. Yes, I got some expenses from the owner.

MR. PORTILLA: Your Honor, I'm looking at page 49, (indiscern.) income and expense statement.

THE COURT: Thank you.

BY MR. PORTILLA:

Q. You list the expenses totaling about 38,694, correct?

A. Yes.

Q. What does marketing comission 10% mean?

A. It's one apartment becomes vacant you pay usually a broker, a commission in a figure of about 10% --

Q. And what's the management --

A. -- of the vacant apartment.

Q. -- 5% percent means?

A. Of the vacancies.

Q. When you compared the expenses that you used with the expenses used by the lender's appraiser, was there much of a difference?

A. No, not too much. Let me see.

Q. Do you recall what was the total of expenses used by the lender's appraiser?

A. Let me see here. Okay, on page 51, of his appraisal. The total expenses are 39,434.

Q. And your expenses were how much?

A. 38,694.

Q. So not much of a difference?

A. No. It's like $800 difference.

Q. Ultimately what type of method, in your professional opinion, would be used when determining the value of the subject building?

A. Mostly with the capitalization approach. And also on the sales comparison approach.

Q. How current is your data?

A. It was very current as of August 2015.

Q. How important it is in the real estate market to have the most up-to-date data when investing or trying to purchase a property?

A. When in a stable market it's -- the data won't change too much except the expenses because the expenses usually go up, but then in this market it's a stable market. So we'd say the last few months the market has been stable.

Q. Have there been any sales since you submitted and completed your appraisal report?

A. Yes, I did.

Q. Have you been able to analyze the sales with the subject building, compare this sales with the subject building?

A. Some are, yes. There was --

Q. One second.

MR. PORTILLA: Your Honor, my office, and my witness, did some research in regards to what are the sales subsequent to him submitting his appraisal report to this Court. We have printouts of certain sales that have occurred since this submission we filed with this Court and I will -- this is not indicated that it was going to be submitted into evidence but no less I think is relevant to show this Court the different types of other --

THE COURT: How would this witness be able to -- how would you be that these -- this -- these -- this evidence be able to be submitted through this witness? Did he conduct the research?

MR. PORTILLA: Yes, he did.

THE COURT: So what's your -- what are you doing right now?

MR. PORTILLA: I would like to submit into evidence, additional sales in Jackson Heights and in the surrounding areas that would show the sales price --

THE COURT: Okay. Additional sales since when?

MR. PORTILLA: Since August 20th, 2015.

THE COURT: Any objection?

MR. CARLEBACH: Yes, Your Honor. You know, the list of exhibits was submitted over a month ago. Mr. Portilla clearly have this and for him to pull out the new sales that are not part of the appraisal at trial, it is just -- you know, it's barred by the joint pre trial order. It's litigation by --

THE COURT: Why wouldn't this have been included in pre-trial order? Why wasn't this included in the pre-trial order?

MR. PORTILLA: Because it was not available to me.

THE COURT: Why wasn't it available? Are these sales had occurred since you filed the pre-trial order?

MR. PORTILLA: The sales -- some of the sales occurred subsequent to the pre-trial order, yes.

THE COURT: Did any -- did all of them occur subsequent to the pre-trial order? And if you knew you're going to offer this why wouldn't you at least have referenced that in the pre-trial order?

MR. PORTILLA: I was not -- I didn't know I was going to offer into evidence, Your Honor.

THE COURT: Well, then why would I let you do it?

MR. PORTILLA: Because essentially it's relevant to the testimony given here today.

THE COURT: Yes, but isn't it unfair surprise to Mr. Carlebach who's not being given the opportunity to examine these or show them to his appraiser?

MR. PORTILLA: Essentially it's documentary evidence, Your Honor, as essentially these sales speaks for themselves.

THE COURT: No, they don't speak for themselves, they are subject to interpretation and explanation by an appraiser. They're not -- the sales are not a formulaic. How a sale is selected, whether its comparable obviously it's -- whether it's in -- what kind of location it's in, whether it's a comparable location it's obviously not a -- something that speaks for itself. It's not like a market quote in the New York Times or something or in the Wall Street Journal or stock price or something like that. This is -- it's -- that's why we're having this testimony. So why isn't this unfair to Mr. Carlebach to bring these -- to spring these things on him now? Could have --

MR. PORTILLA: This information --

THE COURT: -- in fact, if you knew, you were going to do this he could have actually provided it to him two weeks ago so that you could -- so at least at that point he would have had the opportunity to review this with his appraiser and you know, you'd have been in a much stronger position to offer it into evidence.

MR. PORTILLA: This information is also available to Mr. Carlebach, it's Carlebach's information --

THE COURT: Yeah, but -- but his -- the information that your witness has selected the -- of all the comparable sales in the world are not -- isn't it -- what your appraiser has chosen is not something that's -- information that he would be able to look up. So I'm gonna -- I'm not going to allow this. I don't think this is fair. If you knew you were going to -- this -- we had -- we adjourned this hearing from, was it two weeks ago, ten days ago, you could have -- if you knew you were going to be doing this, which you must have, you could have provided that information to him then. He would then have been in a position to review this and to discuss it with his client and to cross examine this witness, so I'm not going to allow it.

MR. PORTILLA: I reserve my right, Your Honor, and point taken.

BY MR. PORTILLA:

Q. What is a cap rate? What is a cap rate?

A. The cap rate is coming from the market and I analyze the capitalization rate based on either properties that were sold in the market.

Q. And why is the cap rate important?

A. That -- usually, that's how an investor is setting the value.

Q. And what cap rate did you use?

A. Five-and-a-half percent.

Q. Is this the same cap rate that was used by the lender's appraiser?

A. Yes.

Q. In your professional opinion is the (indiscern.) being appraised at $900,000 a low value?

A. Yes.

Q. In your professional opinion are -- and experience are building in this surrounding area --

MR. CARLEBACH: Your Honor, I'd like Mr. Portilla could -- well, I can't hear what he is saying.

THE COURT: Yeah, can you speak up. You need to articulate. I'm having trouble understanding --

MR. PORTILLA: I have aligners on -- so sometimes it's hard for me to articulate.

THE COURT: You have, sorry?

MR. PORTILLA: Aligners.

THE COURT: I see. Well, if you could -- if you could try to -- if you could try to --

MR. CARLEBACH: Just speak clearly. I can't hear what you were saying or the witness.

BY MR. PORTILLA:

Q. All right. In your professional opinion, an experience is $900,000 a low value for buildings -- for the subject building and the building in the surrounding area?

A. Yes.

MR. CARLEBACH: Objection. He's leading the witness.

THE COURT: Sustained.

MR. PORTILLA: I've no further questions.

THE COURT: Okay.

CROSS EXAMINATION

BY MR. CARLEBACH:

Q. Mr. Amzallag, I'm going ask you to --

THE COURT: No, I'm going to ask you to speak up, Mr. Carlebach.

MR. CARLEBACH: Okay. I will make every effort to do that.

THE COURT: Thank you.

BY MR. CARLEBACH:

Q. I'm going to ask you, Mr. Amzallag, to turn to page 10 of your appraisal. Do you have that in front of you?

A. Yes.

Q. And you see where it says appraisal problem?

A. Yes.

Q. And you say that the appraisal problem is to estimate the market value of the subject private property as of the date of appraisal. Now -- and you referenced the various approaches to valuation. Now, if you take a look at the second paragraph, you state as follows: "At the time of inspection, all six units were occupied according to the owner. It was not known if they were legally rented nor if they are rent stabilized or rent controlled. The income and expenses of the building were furnished to the appraiser by the owner at the time inspection. It is not known if the occupied units have market rents or regulated. Hence, the income capitalization approach was developed based on the information furnished by the owner." So would you say that you weighted your appraisal towards the sales approach since you didn't have any really solid information with respect to income?

A. No.

Q. Or you say here that you had no idea if they were legally rented, rent stabilized or rent controlled. Now, you're certifying this appraisal.

A. Yeah.

Q. How can you put -- how can you give credence if it's --

you're signing your name to this appraisal.
A. Yes.
Q. And yet you're saying you don't know whether or not these rents are market legal, rent stabilized, isn't it true that you couldn't certify for the veracity of this -- of these statements not knowing this facts?
A. No.
Q. So --
A. The facts here that of being giving some rents and I based my income capitalization approach based on this rents. If they were rent stabilized or not you have rent.
Q. But in fact you had no idea when you did --
A. And you have leases that were provided -- some leases were provided and I based my analysis on the rents that I've been given. If there are rent stabilized or rent controlled it doesn't matter too much for this appraisal.
Q. The leases that were given to you, you have no idea whether those leases were legal leases, do you?
A. Well, I'm assuming they are legal.
Q. You're assuming, but you don't know. In your appraisal you say you don't -- you're assuming because they were given to you, not because you did any independent research as to find out whether the rent being charged in those leases were legal rent.
A. I did some research and I try to get the leases from the

DHCR, another leases the rental but the DHCR wouldn't give me any information because usually the DHCR provide this information only to the owner and I did not have that and what I had also was the -- the analysis from the receiver that based also my rent based on the rents that he was given.

Q. So by the way, do you reference the leases any place in this appraisal?

A. Well, they are -- they are listed on page 44. You have the rent and the lease expirations.

Q. But you -- this was information that was given to you by Mrs. Rojas, right?

A. Right. And the leases too.

Q. But it doesn't say anywhere in this report that you looked at leases. What it does say is that you got the information from the owner --

A. Okay.

Q. -- isn't that correct?

A. Yes.

Q. And in fact, you had no independent verification that any of this information was -- that any of the rental, the rents being charged was in fact legal rent. It was simply hearsay that was told to you by the owner this is what's being charged. That's how you based your income approach, is that correct?

A. As well as the report from the receiver.

Q. And again, you didn't had no independent verification that the information in the receiver report was based on legal rent, it was just based on the rents she was collecting?

A. No, it was on the rent that he was showing on this -- on the report.

Q. Okay. So the receiver was collecting certain rent, the receiver wasn't verifying that the rent he was collecting was the legal rent. He was -- receiver took the property over from Mrs. Rojas, isn't that correct?

A. Yes.

Q. That's what receivers do?

A. Right.

Q. So he was simply collecting the rent that was being charged to this tenants when he took over control of the building?

A. Well, I would say it another way. I think he was collecting the rent that the tenants was giving him.

Q. Okay.

A. They could have given him different rents, not the market rents over their rents.

Q. They were giving him the rent. You talked about leases that were provided, right? They were giving him, they were paying the receiver the rents that were in those leases that were done by Mrs. Rojas, right? Do you have no independent verification that the rents being charged, that the rents collected are actually legal rent.

MR. PORTILLA: Your Honor, objection. Asked and answered. He's asking the same question in a different way.

THE COURT: I'm going to overrule the objection, go ahead.

BY MR. CARLEBACH:

A. Can you repeat the question, please?

Q. I'm simply pointing out you say you relied on the owner and you say you partially relied on the receiver, but you don't know whether the owner or the receiver were collecting legal rent and that's in fact what you say on page 10 is that you have -- it's not known whether these rents were legal. So that is what you say. That is what this appraisal certifies was that you had no idea whether the rents being collected by the receiver, or otherwise, were legal rents.

A. I don't think I say that the rents were legal. I think he may have legal rented.

Q. Excuse me.

THE COURT: I'm sorry, I can't understand what you're saying, can you repeat that?

A. I say that I was not -- it was not known if the apartments were legally rented, I did not mention that the rents were legal or not.

THE COURT: I'm sorry, can you -- I'm not understanding your response.

A. On page 10 the -- where you are referring on the appraisal problem the second paragraph, it says that it was not known if they were legally rented, that means --

Q. The fact that --

A. -- the apartment were legally rented. It doesn't say -- doesn't mention that the apartments, the rents were legal or not.

BY THE COURT:

Q. Okay. What does it mean -- what is it -- what do you mean when you say it was not known if the apartments were legally rented. What does that mean?

A. Because I have been told that maybe some rent -- some tenant were not there legally.

Q. What does that mean not there legally?

A. That they are -- they were not supposed to be there.

Q. Why wouldn't -- why would a tenant -- how would a tenant be in there legal tenant, what does that mean?

A. Well, if the tenant is not in the apartment legally he doesn't -- he may not pay the legal rent also. But what I've been told is that some tenants were there and they were not the actual tenant.

Q. What does that have to do with the rent that's being charged in the -- for the unit?

A. Well, that's the question that's asked the -- the rents that were charged or that were collected from the owner -- from the tenant there were lower than the rents that were in the leases.

Q. So you used the lease amounts?

A. Yes.

Q. But why wouldn't it matter to you whether these were legal rents or not, whether these were higher than the -- whether these rents reflected in the leases were more than the owner was legally entitled to charge?

A. Right.

Q. Why does that -- would that not matter to you?

A. That they were getting -- that the receiver was receiving a lower rent?

Q. No, no, no my question is -- my question is goes to -- okay. You used the rents reflected in the leases?

A. Yes.

Q. Okay.

A. Right.

Q. But it was not -- you did not know whether these rents were -- whether the owner was in fact entitled to charge these rents under DHCR regulations, whether this -- whether these rents were higher than the rent stabilized limit for that in a particular apartment, is that right?

A. I did not have an opinion the DHCR report --

Q. Right.
A. -- as of 2015.
Q. So -- so --
A. So I'm not sure whether DHCR would show.
Q. Right. But that would be the --
A. So I don't have any --
Q. My question is would this -- would it -- if you knew what the DHCR rents were wouldn't -- would that not be the correct rent to use and -- or wouldn't it matter to you?
A. It does matter if the DHCR report was current with the current rents.
Q. But wouldn't you have to --
A. Because the DHCR that I have here that (indiscern.) my appraisal was from 2013 rent --
Q. Right, but don't you --
A. -- and the receiver -- I received the report from the receiver that shows similar rents than what I used.
Q. Right, but wouldn't you have to take -- if you wanted to figure out what the DHCR rents were for these apartments, wouldn't you take the rents from 2013 and add -- isn't there -- is there a standard percentage increase that you add?
A. There is a certain percentage increase. As I mentioned earlier that if you do some renovation to the apartment, you're allowed to have a living increase --
Q. Right. But why would --

A. -- which is 1/40 of the cost of the expenses.
Q. Well, okay, but you would have to -- why would you -- right, so wouldn't you take the approach of taking this rent that's reflected from 2015, figuring out what the current rent would be in the absence of any renovation, and then asking the owner whether there had been renovation and asking to see documentation of it? I mean, if you --
A. I don't have the documentation, but the owner told me that there were renovations.
Q. But you don't have -- do you know by how much money she spent and wouldn't she have to substantiate that and file it with DHCR?
A. That's why I did not took the rent from -- I mean, the DHCR rents I didn't have. So right now it's like a moot point because I don't have -- I did not have the DHCR rents at the time when I did the appraisal, so I wouldn't be able to do any increase, like the rent stabilize increase or rent control increases that you mentioned, or any increases based on the renovation of the apartment. So what you say, if I do an appraisal today, it may be different, but at the time --
Q. Okay.
A. -- I did not have --
Q. Right.
A. -- the information from the DHCR.
Q. Right. You can only go --

A. I just have the information from the receiver.
Q. -- by what you had at the time.
A. I'm sorry?
Q. I'm sorry. You can only go by what you had at the time?
A. Yes.
Q. I'm sorry. What were you saying.
A. Yeah, what I based this on the rents, on the leases, what the owner gave me, and also what the receiver gave us.
THE COURT: Okay. Go ahead, Mr. Carlebach.
BY MR. CARLEBACH:
Q. So the fact that she had accurate DHCR information, this appraisal might look very different, isn't that correct?
A. I'm not sure. I have to analyze the DHCR rents and see if there are any increases.
Q. And, in fact, you sat here in the Courtroom at the first hearing when the lender's -- when our appraisal was on and Exhibit A was introduced into evidence, and -- which was over two months ago. So for two months you've had in your possession accurate DHCR information but you took no steps to modify your appraisal with legal, accurate information, but instead you come in here to Court today --
MR. PORTILLA: Objection, Your Honor.
THE COURT: Okay.
MR. PORTILLA: And the witness is not an attorney. He does not --

THE COURT: All right. I'm sustaining this objection. The witness is testifying about his appraisal as of August 2015. So --

MR. CARLEBACH: Okay.

BY MR. CARLEBACH:

Q. Now, if you take a look at page 10 further, it -- if you look on the top, it says inspection, ownership, and occupancy. Page 10 of your appraisal.

A. Okay. Yes.

Q. "Armand Amzallag inspected the common in and the exterior of the subject property. The owner, according to the assessment records, is Nancy Rojas. According to the owner, at the time of inspection six individual apartments were occupied with no vacancies. The owner lives in a unit. Furthermore, at the time of the inspection, no interior units were inspected. Units were not available for inspection, including the owner's apartment."

A. Right.

Q. Now -- so you never got into even one of the apartments?

A. Right.

Q. So you never saw whether there were any renovations done with respect to any of these apartments?

A. Right.

Q. And, in fact, the owner didn't permit you to go even into her apartment?

A. Right.

Q. Now you've never seen a bill showing that there were any renovations done at this apartment?

A. No.

Q. And in fact, you sat here when the receiver testified that the condition of the building was, in fact, very poor. You heard that?

A. Yes, I did.

Q. Now you suggested that if renovations were done, there might have been a basis for a rent increase, but if -- again, you didn't see any evidence of any of that. And do you -- with respect to -- you talked about that your apartments would have been illegally occupied, correct, and that the rents may not have been legal. Are you familiar with a rent rollback proceeding?

A. A rent roll proceeding in the DHCR?

Q. Have you heard of a rent rollback proceeding, the penalty for charging a tenant more than they are -- than you are statutorily allowed to charge is something called a rent rollback proceeding. Are you familiar with that term?

A. (Indiscern.).

Q. Yes, and it means that --

THE COURT: Well, wait, Mr. Carlebach, you have to ask the witness a question. You can't tell him -- you know, is there some -- are you testifying now?

MR. CARLEBACH: It's cross examination now. These are leading questions. That's --

THE COURT: Right, but you're saying the test, the penalty, whatever it is, I don't know that that's correct. Who's the witness here that's putting that on the record? And you're telling that to the witness. You're asking him to make that assumption. I don't have anything to substantiate that assertion. You can ask the witness. You can provide me with legal authority. But right now, I've got nothing before me to allow me to draw that conclusion.

MR. CARLEBACH: I think the fact the receiver testified on these issues, but --

BY MR. CARLEBACH:

Q. Are you familiar with something called a rent rollback proceeding?

A. Yes, what you just mentioned. Yes.

Q. Yes. And do you know -- is the rent rollback proceeding -- are you familiar with a consequence of charging a tenant more than the legal rent -- a rent stabilized tenant -- charging a rent stabilized tenant more than the legal rent allowed by law. Are you familiar with the consequence of doing that?

A. No, I'm not a lawyer. Sorry.

Q. But you are an appraiser.

A. Yes.

Q. And you're familiar with valuation of commercial property.
A. Yes.
Q. And isn't it true that the first thing an investor in this kind of property would look at is the DHCRs to know whether or not the rents being charged are legal?
A. That could be. Yes.
Q. And the reason is because if they're illegal, they could get hit with a massive rent rollback lawsuit. Isn't that true?
MR. PORTILLA: Objection. Speculation.
THE COURT: Overruled.
A. I'm not sure because I'm not a lawyer. So I'm not sure about the -- all these fees and --
BY MR. CARLEBACH:
Q. But you're valuing real --
A. -- the appraiser --
Q. You're valuing real estate. That's what you do for a living. So you must be familiar with what potential investors, how they value, what is the due diligence that potential investors do when they approach a piece of real estate. That's how you determine value.
A. Yes.
Q. And isn't the amount of the legal rent front and center for a potential investor in figuring out what the value is

and whether or not the rents being charged are legal?
A. But you have to rely on what the owner says and what the leases are. And I rely also on the receiver's report. And I said in my report that may be not legally rented, but it seems like from the receiver's report is that the rents that are legal are actually the rents that I used.
Q. Do you think a potential investor would put one nickel into a property without first knowing whether the rents being charged are legal?
MR. PORTILLA: Objection --
THE COURT: Overruled.
A. That could be.
BY MR. CARLEBACH:
Q. Now you said that the reason why you couldn't get the DHCRs was because you needed the owner's permission?
A. Right.
Q. Now you were working with Mrs. Rojas and her lawyer. Why didn't you get that authority? Why didn't you ask for that authority?
A. Because she didn't provide the DHCR at the time.
Q. You're preparing your appraisal report, why wouldn't you tell Mrs. Rojas or her lawyer that you must get the authority to get the DHCRs? You're working for the owner.
MR. PORTILLA: Objection, Your Honor.
MR. CARLEBACH: She has the ability to do that.

MR. PORTILLA: There was a receiver in place.

THE COURT: Overruled.

Mr. PORTILLA: The receiver has authority --

THE COURT: Overruled.

BY MR. CARLEBACH:

Q. Why didn't you take the steps necessary to get the DHCRs? If you needed it from the receiver, you contact counsel and say I need this. This is crucial to -- did you take any steps to try to get the authority necessary to get the DHCRs?

A. I did not ask the owner. No.

Q. Now turning to the DHCR report, if you take a look at the top. You testified that this was, as of 2013, I believe, but if you take a look at the third line. Well, actually the first line under New York State Division of Housing, if you keep reading it says, "2014 registration rent roll report effective April 1st, 2014." Do you see that?

A. Yes.

Q. So isn't this the legal rent as of April 1st, 2014?

A. No. It was the rents as of 2013, December of 2013.

Q. But it says effective as of 2014.

A. This is when the deadline for the DHCR is. You had to file before April 1st, 2014. So that's how they show it. So these are the rents actually of 2013.

Q. What happens on April 1st? Does the rent change? Is it supposed to -- what is the significance of April 1st? You're saying this is 2013, even though it says 2014, but because April 1st, 2014 is a deadline for what?

A. To file the rents as of December 3rd, 2013.

THE COURT: So there's a filing deadline, you're saying.

A. The filing deadline for DHCR is to receive the rent that were collected in 2013.

BY MR. CARLEBACH:

Q. So you're saying that in 2014, there could have been an increase from 2013?

A. Could be.

Q. Now I'm going to ask you to turn over to, I believe it's page 44 of your appraisal.

THE COURT: Can -- I'm sorry, can I ask a question about the rent roll -- this DHCR report. There's a line -- a column that shows filing date 8/4. Is that August 4, 2014? What does that mean?

A. Are you asking me?

THE COURT: Yes.

A. I'm assuming that the report was filed in August 4, 2014. But the deadline for the DHCR is April 1st, 2014.

THE COURT: I see. So it was filed late, is that what that -- okay. Thank you.

BY MR. CARLEBACH:

Q. I'm going to ask you to turn to -- once again go through

the -- page 44 of your appraisal.
A. Yes.
Q. And compare it once again to the Exhibit A, which is the DHCR report. And if you take a look at -- so 1A is consistent with the DHCR 8-22-68. Now 1B is the owner occupied unit. So you testified that it was the market -- you used a market rent analysis.
A. Yes.
Q. Now isn't there one apartment that has to be set aside for the super?
A. No.
Q. And does this building, in fact, have a super?
A. No.
Q. In your expense report, which is on page 49, you have their payroll of $1,200 a year, I believe.
A. Yes.
Q. And who are you paying $1,200 a year?
A. Someone who would clean the common areas, maybe to remove the garbage.
Q. So you're paying somebody less than 100 -- you're paying somebody $100 a month and that's the entire payroll for the building?
A. For the person to clean up the common areas and to move the garbage to the sidewalk, yes.
Q. Now if you go to -- back to the DHCR report and it says

that apartment 2A is vacant, and you listed apartment 2A as market -- as a rent of $1,800. Do you see that?
A. Yes.
Q. Now, in fact, you don't know whether or not you can charge $1,800 for that vacant unit. It's not an owner occupied unit.
A. There was a lease.
Q. Again, you saw a lease, but you don't know whether it's legal.
A. I'm not a lawyer, so I'm not sure if it's legal or not.
Q. So in fact that 1,800 may not be a legally -- a rent you're legally entitled to charge.
A. Maybe not, but like -- in seeing the report of -- the receiver's report, it says that the rent of 2A was $1,800.
Q. And that's a lease that was negotiated by Mrs. Rojas that the receiver presumably picked up. But you have no idea whether or not that is a legal amount of rent that you're allowed to charge that tenant.
A. It could be not, but however, if the receiver mentioned this rent there, he may have also checked if this rent is legal.
Q. Excuse me. The receiver did what?
A. May have also since he's a receiver of the building, he may have checked if this rent was legal or not and he mentioned that in his report $1,800, which is the same --

Q. He may have checked and if he didn't check, you -- but you have no way of knowing whether he did or didn't. You're just assuming that maybe he checked.
A. Yes.
Q. And take a look at 2B. You list the rent at 1,544.95 and the DHCR report says 1,508.
A. Yes.
Q. And you haven't performed any kind of calculation to figure out whether or not 1,544 increase is statutorily allowed. You simply said that maybe there was a renovation done, that the owner said that there were renovations done?
A. Well, I'm assuming here that this was a negotiation between the owner and the tenant and they approved the rent increase.
Q. But isn't it true that even if the tenant agrees to a rent which is higher than legally allowed, it's still an illegal rent?
A. But in this case, the DHCR as of 2013 rent 1,508 and -- to 1,544, I'm assuming it's not illegal based on the DHCR --
Q. But you haven't -- you didn't make a calculation as to whether or not what the right statutory increase, if any, was allowed with respect to this apartment, whether that increase was permissible. You're just assuming that it looks maybe it might be good, right?
A. I did the calculation. I don't have it in front of me,

but I did a calculation. Usually it's like 2, 4% increase a year. So I don't have the calculation in front of me, but I would assume that it's maybe like two and half percent, maybe increase, which is within the statutory increases that they allow every year.

Q. That's what you're saying today, but at the time that you prepared your report, you had no way of knowing whether or not this is, in fact -- you never calculated as to whether or not this is legally permissible or not.

A. You mean, that the rent that was stated on the DHRC, you don't know if it's legal or not?

Q. No, no. That the rent that's being charged in your report, the 1,544.95, you never performed a calculation or a legal analysis as to whether or not that's a legally correct rent?

A. When you say calculation, based on what? On the 1,508?

Q. Based on anything. Based on what the statutory permissible increase is based on the length of the lease, the kind of analysis that investors and owners do to figure out whether a rent is legal or not. You didn't do that when you put these numbers into your appraisal. Is that not correct?

A. No.

Q. You did not do that?

A. Based on the receiver's report, he mentioned that it was 1,508. So 1,508 to 1,544.95, it's only about -- I would say two and a half percent increase over two years and I don't see anything illegal based on the DHCR report.

Q. Let's go to the next unit and that's apartment 3A. And on page 44, you list it as being $1,800. The DHCR as of 2013, you say is 1,343.34.

A. Yes.

Q. You'll agree with me on that that there's no way that that is just a statutory increase, isn't that correct?

A. No. You see also you have what I didn't mention earlier, if you have a vacancy and you rent it to another tenant, you're allowed to increase I think it's 20% of the rent -- of the previous rent. And as I mentioned again, if the apartment was vacant and then renovated, so you may have all these increases.

Q. Let me point something out to you. You know, the 1,544.95 is a very exact number and that's the rent you list for 2B. It's a very exact number, which --

A. Yes, I took this from the lease.

Q. -- one could conceive is a statutory increase that's extrapolated to be a statutory increase. The $1,800 numbers that are listed for 2A and 3A, those wouldn't be statutory increases. Those are just numbers somebody picked out of a hat to charge a tenant. Isn't that true?

A. No. As I mentioned to you earlier is that if you have a vacancy, you can increase the rent and if you have renovation in the apartment, you can have another increase. So it could be $1,800.

Q. It would be $1,800 on the numbers, the two apartments --

A. That could be.

Q. -- just happened to be $1,800 based on possible renovation and vacancies.

A. Right, and it could have been --

Q. Is that your testimony?

A. -- even higher than that. Maybe the owner just mentioned why don't you have just $1,800 even.

Q. Right. So at this point you're speculating. You have no idea whether these rents have any relationship to the proper legal rent, but you're speculating that maybe it -- maybe something happened which would make it legal. You have no idea whether it actually happened.

A. Right.

Q. And once again I point out to you, you see 3B, which is completely consistent with the DHCR report of 2013 is a very exact number $1,701.22. When you're complying with the DHCR, isn't it true that you get really granular, down to the cents and the dollars, those are the kinds of increases that are legally allowed? Isn't that correct?

MR. PORTILLA: Objection. The witness is not in a position to determine what the actual amount of rent determined by the DHCR?

THE COURT: I'm sorry. Say that again.

MR. PORTILLA: The witness is not in a position to testify on what the DHCR is going to determine what is an actual rent to be charged.

THE COURT: Overruling the objection.

BY MR. CARLEBACH:

Q. You can answer the question.

A. Can you repeat it, please?

Q. I pointed out to you that apartment 3B, which is one of the two apartments which is consistent with the DHCR, 1A and 3B, the rents being charged have a very specific dollar amount and a very specific cents amount. And I'm asking you that isn't it true that a rent stabilized unit which is in compliance with DHCR regulations, the rent will always be a very specific dollar and very specific cent because it is a statutory formula. Whatever that formula may be, it's a percentage formula which will never just end up in zeros. It's going to be a very specific number. Isn't --

A. No.

Q. -- that correct?

A. No. Because the legal rent could be -- let's say, for example, that 2A or 3A could have been 1,850 -- $1,850.22, but if the owner wanted to have this particular tenant and say, well, I'll rent it to you at lower than what I'm allowed, so I'll give you this apartment at $1,800. I need

-- that's why maybe it's a rounded number.

Q. So you're suggesting that the owner charged a tenant less than would be allowed by law?

A. That could be. It happens very often.

Q. Really?

A. Sometimes the rent stabilized apartments are higher than the market.

Q. Are these the kinds of assumptions that this appraisal is based on that maybe the owner charged less and maybe renovations were done and maybe there were vacancies? Are these the kind of assumptions that this Court is supposed to rely on in figuring out the income approach?

A. No. I based my income based on the leases, what the owner gave me, and the receiver's report.

Q. Isn't it true that given the fact that your knowledge of the legal rent, you admit here on page 10 that you had no knowledge whether any of these units were being charged legal rent. So you had to weigh the appraisal in favor of the sales approach because you didn't really have any information on the income and that's the valuation problem. That's the appraisal problem that you talk about on page 10, that you had no information. Isn't that correct?

A. No. I had the information. It's just I'm assuming that information that we're given is correct.

Q. Isn't it true that a potential investor in commercial properties in these kind of small, multi-family units focuses almost exclusively on income on the income approach when buying property?

MR. PORTILLA: Objection. The witness cannot testify what a potential investor is going to determine how to buy --

THE COURT: Overruled.

A. Well, a potential investor would take the income approach into account. It also -- but what other properties are sold in the area, not only the income approach.

BY MR. CARLEBACH:

Q. But in fact, other properties and, you know, referring to the sales comparisons that you testified about, their income may have been completely different. Isn't that true?

A. Yes.

Q. And in fact, the income with respect to those properties was verifiable.

A. Not always. If they are not filed with the DHCR, there is no way of knowing what the income is except if you ask the owners for the income.

Q. So isn't it true that the sales -- but, you know, the purchasers of those properties may have figured out -- I mean, those are the first things that an investor will ask for is to see a rent roll. And if it's a free market, the rent roll would be accurate because in a free market

apartment, you don't need to see a DHCR. So isn't it fair to assume that the income information with respect to those sales is available to those investors?
A. Even if the apartments are market rent, you wouldn't get them anywhere except from the owner or the broker if he has the information.
Q. And again, and you also got some leases apparently from the owner, but you had no idea whether the leases were correct. If it was free market, they would be correct. Isn't that true?
A. No.
Q. Why not?
A. Because one would assume that a lease would be illegal if it's market rent. And if it's stabilized, it's not illegal.
Q. If it's a free market apartment and you see a signed contract between the owner and a tenant, and by law -- by definition, it's legal. But if it's rent stabilized, you have to see the DHCR to know if the rent being charged is a legal rent. Isn't that correct?
A. Not always, because even the DHCR, it's what the owner is listing. So if they are consistent with previous rents then the DHCR wouldn't say anything. And actually, you can rent any -- you can lease any rent with the DHCR and if the tenant does not file the complaint with the DHCR that his rent is too high, the DHCR wouldn't say anything.

Q. Now --
A. So the rent in the DHCR could be legal or illegal until the tenant files the complaint.
Q. The comparables that you used, did you have an opportunity to inspect the condition of those comparables?
A. Which one? The sales or the rentals?
Q. The sales comparables.
A. I inspected them from the outside, yes.
Q. And what would you say was the condition of those?
A. Well, most of them were similar except one that -- let me see, which one. On page 28, I mentioned that cell 3 and cell 6 are in inferior condition based on the inspection, the exterior inspection. Most of the time we can kind of tell what the condition of the building is by the windows. If they're all new windows, you're almost sure that the condition of the building is inferior. But if the windows were renovated and if the bricks are -- the facade was restored, and all kind of other things that you take in consideration with an exterior inspection.
THE COURT: So you decided -- you determined these two were in superior condition?
A. No, inferior condition.
THE COURT: Inferior. Okay, I'm having trouble -- you took an adjustment, a downward adjustment then?
A. No, a positive adjustment. Upward. That means it was

inferior.

THE COURT: Positive. Right, right, right. Got it.

A. Then you do an upward adjustment.

THE COURT: Okay. I'm with you now.

BY MR. CARLEBACH:

Q. Did you take into account whether these sales comparables were rent stabilized or free market buildings?

A. Well, I did not have the income and the expenses on these buildings. So I'm assuming that maybe some were rent stabilized, some rent controlled, or maybe open market (indiscern.) to the building, to the subject.

Q. And, in fact, you didn't do an interior inspection of not only not the sale comparables, you never even did an interior inspection of even one unit at the subject property.

A. Right. I just inspected the common areas and the basement of the subject.

Q. And --

A. The cells -- to inspect the interior of the cells, it's possible, except if the owner will let you in and going up in there won't let you in.

Q. You certainly could have inspected the interior of the subject property to see what kind of condition it was in, but you didn't do that.

A. Well, I could have but if the tenants are reluctant to show their apartment, then you don't have to get in. You cannot get in if the tenant doesn't want to show it to you, especially in a rent stabilized apartment. They won't let you in if they don't want to.

Q. But you say on page 10 that even Mrs. Rojas wouldn't let you into her apartment.

A. Right.

Q. How do you explain that?

THE COURT: Okay --

A. I'm not sure.

THE COURT: Can you move this along a little bit, Mr. Carlebach?

MR. CARLEBACH: I'm finishing up.

THE COURT: Okay. Appreciate it.

BY MR. CARLEBACH:

Q. So it's absolutely conceivable that the interior condition of the units at this building was really bad. And as the receiver testified, an interior condition of the units at the sale comparables was in much better shape. Some of these were superior buildings, isn't that true?

A. Well, we can make a lot of assumptions, but the assumption that I had was that most of the apartments, as mentioned in the appraisal report, that they were in good condition.

Q. And, in fact, these sales comparables may have been free market buildings, whereas this is a rent stabilized building

that there may be illegal rents being charged at, isn't that true?
A. That could be. However, in this market, there are not too many market rent buildings.
BY THE COURT:
Q. I'm sorry. Say that --
A. In this market, there are not too many buildings that have only market rent apartments, especially when you have six units, then they are -- most of them are rent stabilized or rent controlled.
Q. But if -- so but if they're rent stabilized, they might be stabilized at different levels, right, or am I --
A. Yes.
Q. Okay. So you could have two apartments that are similar --
A. Yes.
Q. -- in a similar area, but with different rents --
A. Right.
Q. -- because they're -- they've got different -- they're historically -- because the way the rents were originally that the rent stabilized rent roll is materially different.
A. Yes, Your Honor.
Q. Okay. So not every building that's comparable has the same rent stabilized rent?
A. Right.

Q. Where -- which is different. If there were market rents, however, and if I'm correct, you would normally make the assumption that comparable buildings have comparable rents.
A. Well, it depends on the condition of the building and depends on the tenancy and on the market, of course.
Q. I mean, if there are two buildings, similar conditions, similar market, market rent should be about the same.
A. Yes.
Q. But rent stabilized don't know at all, is that right?
A. Yes. I could say yes.
Q. You can't make any assumption really. I mean, I'm just asking because I don't know.
A. Yeah, it could be, because some rent stabilized apartments could be lower than others just because the -- as I mentioned earlier, if the apartment was not -- has not been vacated, then you're stuck with some low rent. But if the apartment had been vacated every year or two, you're allowed to increase, like I think it's 20% now.
Q. Okay. So if I were trying to figure out the value of this building, which is what I'm going to have to do, wouldn't I be better -- would I be better off using the rent stabilized rents or what -- or the best approximation of what they would be rather than the actual rent?
A. No, I would use the actual rent that were given because if the receiver did not receive the actual rent that he was

supposed to, I would say if you managed the building properly, you should be able to get the rents that the tenants owed.
Q. But what if the rent is -- okay, if the actual rent that the receiver's collecting is higher than the rent stabilized limit, isn't that a problem? Wouldn't you -- and if you're figuring out what the building's worth, wouldn't you use the legal rent and not the rent that's actually being collected or am I wrong about that?
A. Well, I'm not sure what you're saying because I think -- what I understand is that the rents that were collected are all lower than the actual rent, except the apartment 1A and the apartment 2B.
Q. Okay.
A. And it seems like the other tenants are not paying their rent. So I think there is a problem in managing the building.
Q. Okay, but if you're trying to figure out what the value of the building is, I guess you would make the assumption that rent is being collected from each tenant, correct? Or that a new owner would be collecting rent from each tenant.
A. Right. Right.
Q. Would evict tenants who are not paying rent, that would put in a tenant who would pay the rent.
A. Right.

Q. Okay. So you would start with the assumption that rent's going to be paid in each unit?
A. Yes.
Q. So, but then you have to figure out how much rent to assume is going to be collected from each unit. So wouldn't you go by the rent stabilized rent as opposed to the rent that the receiver's collecting if it's more or no?
A. Well, it depends how -- of course, if you are purchasing a building, you are going to try to base your analysis on the lower rent and he then say that I'm basing -- his analysis can be based on -- only on the tenants that are paying --
Q. Right.
A. -- and have a very high vacancy rate.
Q. Right.
A. When -- but this is when you want to purchase a property because you want to buy it at the lower price. But it's -- we have to make sure that it's actually the case because we have to see when the person would buy this property, he would get the rent that is stated on the lease.
Q. But if -- isn't the -- is the purchaser taking a risk that the rents that are being charged are excessive? Is that a risk that the purchaser would be concerned about?
A. Well, very often, that's what happens that you find out other things after you purchase the building, things that you didn't know before. Even if you do your due diligence and

all that, sometimes you get information that were not correct.

Q. But if you -- if you have the ability -- okay, you're trying to figure out what's the building worth, what -- how much money -- what's the maximum amount I'm willing to pay for this building. Would you try to -- if you could determine -- if you had a rent roll from two years ago, a DHCR rent roll from two years ago, and you had the information about what the receiver's collecting now, what would you use -- what income would you use? If you were a hypothetical purchaser to figure out what's the maximum amount you're going to pay. I would think you'd take the rent roll -- the DHCR rent roll and try to extrapolate what you think the rents are now, make a reasonable approximation, which isn't too difficult to do, I don't think, is it? Because you know what the -- it's only three years, so you could figure out within a range. You know, you can see from the lease -- the length of the leases. You can figure out whether the apartment's turned over or -- and you could make some assumptions about that. Wouldn't you do that rather than just taking the rent that the receiver gives you?

A. Yeah. If you know what the vacancies were and what the renovation was in between the lease of the DHCR and today, I guess you can do a calculation like that.

Q. If you're buying the building and you don't have --

you're looking to buy the building and you don't have any evidence of renovations that were made, that's not -- you're not going to assume that there were renovations, right, because you'd -- in order for you to get the benefit of that with DHCR, you'd have to get the -- have the evidence that the renovations were made. You have to show the bills.
A. Right.
Q. You'd have to file that with DHCR.
A. Right.
Q. Even if the prior owner made those renovations, if you don't have that information, that doesn't help you, correct?
A. Right.
THE COURT: Okay. All right. I don't have any other questions.
BY MR. CARLEBACH:
Q. One final question. You were here when our appraiser was testifying and you heard him testify that his appraisal was, in fact, a number -- and the income number, the 89,000 that he put in there was, in fact, based -- was completely consistent with Exhibit A, the DHCR rent. Do you recall hearing that?
A. No, I don't remember.
MR. CARLEBACH: I have nothing further.
THE COURT: Okay. Mr. Portilla, cross examination -- or redirect, I should say.

REDIRECT EXAMINATION

BY MR. PORTILLA:

Q. Do you recall when the receiver was testifying here at the last hearing?

A. Yes.

Q. Do you recall when he testified that he is --

MR. CARLEBACH: Your Honor, I would once again ask Mr. Portilla to just --

THE COURT: We're having a lot of trouble understanding you.

BY MR. PORTILLA:

Q. Do you recall when he testified that he's an attorney?

A. Yes.

Q. Have you ever dealt with receivers before?

A. No.

Q. Is it your understanding that the receiver in this case was controlling and managing the building?

A. Yes.

Q. Would it be your understanding that by him maintaining -- by him controlling the manageability that he was living up to his duties as a receiver?

A. Yes.

Q. Is it safe to assume that those duties include in collecting the actual rents that needed to be collected of the subject premises?

MR. CARLEBACH: Objection. Leading the witness.

THE COURT: I'm going to allow it. Go ahead.

A. I'm sorry. Can you repeat the question? Sorry.

BY MR. PORTILLA:

Q. Is it safe to assume that that duty as a receiver also included him collecting the actual rents that he was supposed to collect from these tenants?

A. Yes.

MR. CARLEBACH: Objection as to the word actual. Does he mean the rents that's in the lease? Does he mean legal? What does he mean by actual rents?

THE COURT: Sustained.

BY MR. PORTILLA:

Q. How did you get a copy of the receiver's report?

A. I think you forwarded it to me.

Q. Were you informed whether or not this report was generated by the receiver?

A. That's why it's mentioned on the first page. It says monthly report as a receiver as of May 31st, 2015.

Q. Is that report addressed to anyone?

A. I'm sorry?

Q. Is that report addressed to anyone? Is the report in your hand addressed to anyone?

MR. CARLEBACH: Objection. It's hearsay. The report is not in evidence.

THE COURT: What -- with the -- which report's not --

MR. PORTILLA: The report is in --

MR. CARLEBACH: Well, maybe it is in evidence. Withdrawn. Withdrawn.

MR. PORTILLA: It doesn't matter because it's been filed with this Court.

A. Actually, as I mentioned, this page of the report is like it was in the report of the appraisal of the other appraiser because (indiscern.), just the one page.

BY MR. PORTILLA:

Q. So a scheduled of the rents being collected by the receiver was also included as an exhibit to the lender's appraisal?

A. Yes. Yes, at one page.

Q. If the subject building was vacant, would a potential purchaser be required to charge the rents listed in the DHCR that was submitted into evidence?

MR. CARLEBACH: Objection. Calls for speculation.

THE COURT: Overruled.

A. Well, the potential investor would charge what the leases would show and the DHCR --

BY MR. PORTILLA:

Q. That's not my question. My question is if the subject building was vacant, no leases, would that purchaser of the building be required to charge the rents listed in the DHCR report that were submitted into evidence?

MR. CARLEBACH: Objection. Mr. Portilla previously objected on the basis that Mr. Amzallag is not a lawyer --

THE COURT: Overruled. I'm --

MR. CARLEBACH: -- and is not a lawyer and is not competent to answer whether or not -- I mean he's getting into Rent Stabilization Code law, hypotheticals. If the building would be vacant, would a potential investor be required -- I mean, there's no -- Mr. -- this witness hasn't been qualified as an expert on the Rent Stabilization Code as to whether or not -- he displayed a very weak knowledge of some of the most basic portions of it. How can he testify without being qualified as an expert as to the intricacies of rent stabilization if a building were vacant, what would a potential investor's legal obligations be.

THE COURT: I'm sustaining the objection.

BY MR. PORTILLA:

Q. To your knowledge, are rent stabilized units allowed an increase in rent?

A. Yes.

Q. To your knowledge, is there a criteria used to determine how a unit gets an increase of rent?

A. Yes.

Q. What is that criteria?

A. Well, there are several criteria. There are stated increases every year. And then you have a vacancy increase. And you have also an increase based on the renovation that you can do in the apartment as well as in the building also if you have capital investments, which is the MCI (phonetic).

Q. So but a potential investor purchases this building vacant and makes renovations to the units, will he be allowed to charge higher rents compared to the rents listed in the DHCR report?

A. Yes.

Q. And that increase would be based on the renovations of the building, the renovations of the units, and the surrounding market?

A. And the vacancies as well. And the market, yes.

MR. PORTILLA: When you add up -- I'm on page 44, Your Honor -- of Debtor's Exhibit A.

THE COURT: I'm looking at it.

MR. PORTILLA: When you average out the rents being collected by the receiver, according to my math, Your Honor, it comes out to $1,533.77.

THE COURT: This is -- you're looking at what? At page 44?

MR. PORTILLA: Forty four. I'm just averaging out the rents for each unit.

THE COURT: Okay. Are you assuming anything's being collected for the owner's unit?

MR. PORTILLA: I'm using the market rent.

THE COURT: Are you dividing the monthly -- the total by six or by seven?

MR. PORTILLA: Let me recalculate my --

THE COURT: Or by five or by six I mean to say.

MR. PORTILLA: By six, I'm sorry. It came out to a little higher number. $1,561.

THE COURT: So you're taking 7,668.85 plus 1,700 divided by 6?

MR. PORTILLA: Correct.

THE COURT: Okay.

BY MR. PORTILLA:

Q. Based on your professional opinion, is the average rent being collected, which according to your calculations -- using your numbers comes out to 1,562? Is that according to the market in that area?

A. Yeah, it seems like it's lower than the market from the rents that I used, potential rents. I thought the market, it's around $1,700 for the apartment, for a two bedroom apartment. So it's lower than the market, yes.

Q. So to your knowledge not one tenant has filed a complaint with the receiver regarding an alleged overcharge of rent, correct?

A. Yeah, I didn't see that in the report, yes.

Q. Based on the analysis that you have performed and based on you reviewing the receiver's report, it seems like the receiver has been collecting the rent consistently, correct?

A. It seems like he has been collecting some rents only on two apartments and also the owner's apartment.

Q. Now the issue in regards to rents being registered or not being registered, that in itself would not preclude a purchaser from charging a higher rent if he meets certain criteria, correct?

A. Yes.

Q. So based on your knowledge --

THE COURT: Well, what does certain criteria mean? What does that mean?

MR. PORTILLA: The witness testified the criteria includes vacancies, renovations to the units, renovations to the building which will allow an owner or potential purchaser to charge higher rents than the rents that were previously recorded with DHCR.

THE COURT: In this case, we're looking at a place -- at three units with leases that go for at least another year, correct?

MR. PORTILLA: Correct.

THE COURT: And two units, one -- two units that are -- seem to be at the rent stabilized level with -- that are -- where the rent's expired -- the lease has expired. So we're supposed -- how are we supposed to assume that they're going to be -- that the building will be purchased vacant or that the purchaser would be able to put a new tenant in before the expiration of the lease?

MR. PORTILLA: Well, the point that I'm trying to extract, Your Honor, is two fold. One that a potential purchaser, if the building was vacant --

THE COURT: It's not vacant.

MR. PORTILLA: The potential purchaser has the ability to charge a higher rent if he's able -- if he or she is able to show that there's been renovations done to the building, there have been renovations done to the apartments in order to justify a higher rent.

THE COURT: Right, but in this case we do not know if there have been renovations done to the building and a potential purchaser doesn't know whether there are renovations that have been done to the building. And a potential purchaser who's going to make renovations to the building would -- that would be a capital investment that they would have to make that would presumably factor into the purchase price right off the top, I would think. So I don't understand where you're going with this. And why would we assume that they're purchasing it vacant? This building -- these are leases that your tenant, your client signed that go through -- that go for another year. So how are they buying it vacant in 2015?

MR. PORTILLA: The point that I'm trying to get across is essentially that the owner or the potential purchaser will have the ability to charge a higher rent.

THE COURT: In the future, maybe, if they make a capital investment when the leases expire, but that's not what we're talking about. We're talking about valuation now.

MR. PORTILLA: Even if -- understood, Your Honor. I'll move on.

THE COURT: Unless I'm missing something.

MR. PORTILLA: No. The point is is that the -- my client could go down to the Department of Buildings, show proof that the building has been renovated.

THE COURT: However, no such proof has been presented in this proceeding of any kind. So I'm not going to make the assumption. How would I -- what record -- what basis would I have on this record to make an assumption that your client renovated the building, how much she spent, that -- does she have the records, that she could substantiate it, and whatever -- what rent increase she could win from that. There's no evidence of that.

MR. PORTILLA: My client would be prepared to submit that into the record.

THE COURT: It's too -- this is the hearing. This is the hearing. You just got through telling me your client's not going to testify. We're not continuing this. And if you were going to submit documentary evidence of renovations, that would have been something you would have needed to include in the joint Pretrial Order.

MR. PORTILLA: Your Honor, one last question. Two questions.

BY MR. PORTILLA:

Q. Did you receive copies of the leases in connection with these units?

A. Yes.

Q. And that's how you were able to get the lease expiration dates listed in your report on page 44, correct? And you verified this information with the report submitted by the receiver?

A. Right, and the owner.

Q. And to your knowledge, the receiver's report was accurate?

A. Yes.

MR. PORTILLA: No further questions.

THE COURT: Okay. Anything else, Mr. Carlebach?

MR. CARLEBACH: Very quick recross.

RECROSS EXAMINATION

BY MR. CARLEBACH:

Q. Do you know the difference between a rent stabilized lease and a non-rent stabilized lease?

A. Yes.

Q. In terms of the form?

A. The form?

Q. The form of lease. It's a different form of lease. A rent stabilization lease looks one way. A non -- a free market lease looks different. Are you familiar with that distinction?

A. Very often, they use a similar lease because it's --

Q. So you don't know whether or not the leases you looked at were rent stabilized leases or not?

A. Right.

Q. And in fact, all of the issues mentioned by Mr. Portilla, vacancies -- about that you'd get a rent increase vacancies, renovations. These are very specific items under the Code of the Rent Stabilization Code, isn't that true?

A. I don't understand your question.

Q. Well, for example, you talk about renovations. In order to get an increase for renovation, there has to -- you have to invest one-fortieth. You can get an increase based on one-fortieth of the investment.

A. Yes.

Q. So if you invested $4,000, you could get an increase of $100.

A. Right.

Q. And we have -- and there's no evidence in the record --

and, in fact, the bills, evidence saying that capital investment have to be filed with DHCR in order to qualify under the Rent Stabilization Code for the increase.

A. Yes.

Q. And there's no evidence -- you haven't seen any evidence that any such filing was made with the DHCR with respect to the subject property?

A. Right. As I mentioned earlier, that was not --

Q. Excuse me?

A. As I mentioned earlier, I was not able to get the information from the DHCR.

Q. Okay. And in the document that was obtained from DHCR, there's nothing that reflects that there was an increase, Exhibit A, Lender's A, there's nothing that reflects a filing that would reflect that there was an increase based on renovation?

A. From my experience, the DHCR report never mentioned that, that there was an increase, unless you saw the DHCR report from a previous year and then you will see the difference. But it wouldn't show on the report why there was an increase or if there was an increase, or if there is capital improvement, improvement in the apartment or a vacancy. It wouldn't show that. I can see one thing here, that the apartment 2A was vacant. So I'm assuming that there was a vacancy increase and maybe some renovation also increases.

So I don't know what was the rent at the time, what was the legal rent from the DHCR point of view and right now it shows that 1,800.

Q. If you need to invest $4,000 to get $100 increase, if apartments 3A went up from 1,343 to 1,800 based on a renovation, somebody would have had to invest at least $20,000 or something like that. Isn't that true?

A. That could be. You'd know if it was --

MR. PORTILLA: Objection. Speculating.

THE COURT: Okay.

BY MR. CARLEBACH:

Q. It's just a simple mathematical calculation as to what the Rent Stabilization Code requires in order to get a jump from 1,343 to 1,800, which is almost $500. If it's $100 -- if it's one-fortieth, so that's $100 for $4,000, you get one-fortieth, which is $100, isn't that correct?

A. No. It depends if you can give me more information concerning the vacancy and also maybe some other renovation in the building, like maybe a roof.

Q. I'm just talking strictly on renovation.

A. Well, you cannot just say only on the renovation because there may be other factors there between 1,343 and 1,900. Maybe the tenant left and a new tenant came.

Q. Do you have any reason to believe that there was any kind of vacancy along those lines?

A. I don't know. But these last three years or two years from 2013 and my date of appraisal, 2015, it could have been vacant a couple of times. Who knows?
Q. So if you were a potential investor, you would rely on speculation about things that might or might not have happened or would you rely on what the actual DHCR reflects?
A. As I mentioned, this DHCR report is as of 2013. So it's kind of outdated report. I would say what is the history between 2013 and 2015, the date of my appraisal. And based on the history, I would make another decision.
Q. Have you seen the receiver Order in this case? The Order appointing the receiver?
A. I saw the report from the receiver as of --
Q. That wasn't my question. My question was if you saw the Order appointing the receiver?
A. No.
Q. Do you know whether or not the receiver has any obligations with respect to rent overcharges?
A. I don't know.
MR. CARLEBACH: I have nothing further, Your Honor.
THE COURT: Okay. Anything else, Mr. Portilla?
MR. PORTILLA: No, Your Honor.
THE COURT: Okay. Sir, you are excused. Okay, anything -- any other witnesses you're calling at this point, Mr. Portilla?

(Witness leaves stand)

MR. PORTILLA: No.

THE COURT: Okay. So that concludes the evidentiary hearing, correct?

MR. PORTILLA: Yes.

THE COURT: Okay. I have some questions that I'd like to ask, I guess -- I don't really feel like I need to have closing statements, but my questions I think are primarily to you, Mr. Carlebach, about how -- and they go to how to evaluate the rent roll that your appraiser used. Can you take a look at that? It's on page 55 of your appraisal report. Your -- so, okay. So we have 1A is the -- and of course since he didn't break it down monthly, I had to divide by 12, you know, to see what the monthly rent was. And what I came up with was, and somebody can check my math. Maybe you can check my math while I'm doing this. But I had -- for the first two, for 1A and 1B, I have per month -- divide that by 12, I get 839.

MR. CARLEBACH: Which -- again, the DHCR is 822.68 so --

THE COURT: Right.

MR. CARLEBACH: -- you probably gave a statutory increase.

THE COURT: Okay, so why -- what would be the basis for assigning a rent of 839 to the owner occupied employee apartment?

MR. CARLEBACH: I believe the reason why he did that was because in the event that the owner would not occupy it, it would probably be given to a super or something like that. It's not -- you know, the assumption would be that it would automatically become a market rent apartment. But he felt that there was not -- that their appraisal did not take into account, you know, an --

THE COURT: Okay. Well, suppose the new purchaser chose to have somebody come -- felt that a six unit apartment doesn't need a super. We can send somebody in to clean once a week. Are you saying that the owner occupied apartment would revert to market?

MR. CARLEBACH: It might revert to market, but there might have to be a counter-balancing increase in payroll or something like that. One of the ways that supers are paid is by giving them free rent.

THE COURT: Right.

MR. CARLEBACH: If you're not going to give them the free rent, then you have to --

THE COURT: Okay.

MR. CARLEBACH: -- counter-balance it.

THE COURT: Okay.

MR. CARLEBACH: And he was building that into that number.

THE COURT: Okay. So then you have the vacant apartment that's 2A. Where does his number, which I -- again, dividing by 12, I get 1,295. Is that correct? Where does that number come from?

MR. CARLEBACH: That number comes from a document which we couldn't get into evidence which was a -- when Ms. Rojas, two years ago in 2013, she was asked to give a rent roll to the bank. I think it was in connection with the modification. She gave the number 1,270 for that apartment. And again, you have -- we couldn't extrapolate it. We assume that that was a DHCR number. And again, you have the increased extrapolation by the $25. I mean, I can show that to the Court if --

THE COURT: That's 2A. Well, I'm not going to look at it if it wasn't admitted in evidence.

MR. CARLEBACH: Well, we believe that that's a DHCR number as well. And it also is consistent with a document which is in evidence, which was the Rule 1007 Affidavit, which is exactly consistent with that number. Her Rule 1007 Affidavit is exactly consistent with the numbers that she gave to the bank in --

THE COURT: Is there a rent roll in the 1007 Affidavit?

MR. CARLEBACH: There's a total 6,521.81 in the Rule 1007 Affidavit which is in evidence.

THE COURT: So she doesn't break that down by apartment?

MR. CARLEBACH: She did not, but it's -- she did break it down when she gave it to the bank and that was the number we used.

THE COURT: Are you saying you can back into that number using the --

MR. CARLEBACH: Exactly.

THE COURT: -- other rents?

MR. CARLEBACH: To the penny.

THE COURT: Okay. And then 3A seems pretty consistent. 2B, he's showing a lower rent than the legal rent. I have -- excuse me, I should say I have 1,480 -- when I divide 17,772 by 12, I get 1,481.

MR. CARLEBACH: Yeah, that -- again, that's a number that -- he didn't actually have the DHCR number. He had her numbers. And that was a number that Ms. Rojas had given to the bank was 1,481. And -- it may have been -- there may be a 2% increase reflected there. I think he gave everybody a 2% increase over the numbers --

THE COURT: Well, this would be -- but this number is lower than the -- I mean, your Exhibit A number.

MR. CARLEBACH: It is, because he didn't have the DHCR number. He didn't have this report. He had Ms. Rojas' number that she gave to the bank and he was working off that.

THE COURT: Okay. And again, the same thing is true for 3B, which has a lower number shown -- that he's showing that the appraiser is using for that unit than the two year old DHCR report.

MR. CARLEBACH: Right. She had said 1,635 and I think that the DHCR is probably -- began probably consistent with the statutory allowable increase.

THE COURT: Of course, the receiver is collecting a higher -- had been collecting a higher amount.

MR. CARLEBACH: He's collecting whatever.

THE COURT: Okay.

MR. CARLEBACH: There was even a brouhaha very recently, which I didn't want to burden the Court with where he had new leases.

THE COURT: Don't burden me with it then.

MR. CARLEBACH: Yeah, you know, he's a -- he came into a difficult situation and is trying to do the best job he can.

THE COURT: Okay. All right. Okay, I don't have any other questions. Did you have anything else you wanted to -- anybody have anything else they want to put on the record?

MR. PORTILLA: I mean, the only thing I want to just add to the Court, unit 1B and I just want -- just want to get clarity from Mr. Carlebach.

THE COURT: Yes.

MR. PORTILLA: On page 55 of your appraisal.

THE COURT: 1B did you say?

MR. PORTILLA: Right. The 689, which is consistent, is that square footage?

MR. CARLEBACH: It says square footage. I don't think it matters, though. I mean, I -- you know --

MR. PORTILLA: Because 1B, which is the apartment which my -- which the Debtor occupies is the biggest apartment in the entire building. And it's above --

THE COURT: And we're talking about whatever she can charge legally. Is that related to square footage?

MR. PORTILLA: Well, in terms of the value of what that apartment is.

THE COURT: But, Mr. Portilla, if I don't -- and, please, somebody explain to me if I'm approaching this the wrong way. This could be the biggest apartment in the world, but if your -- if the law prohibits you from charging above a certain amount for rent, that's what you can get. Isn't that right?

MR. PORTILLA: The law prohibits you -- yes, the law will prohibit you to charge a certain amount of rent.

THE COURT: Right.

MR. PORTILLA: But upon exploration of the lease, you could charge up to a certain amount based on the certain criteria that the rent stabilization laws allows you to.

THE COURT: Well, you can -- I thought it was based upon a percentage of the prior rents, not you don't -- it's not -- or if you make renovations, you can factor that in. No evidence of renovations here. So that's not a factor. But you don't get to charge more based upon the square -- in other words, you know, you're charging $800 a month, your tenant leaves. You can charge 20% more to the new tenant, but not 20% plus a bonus because of the square footage in the apartment, correct?

MR. PORTILLA: Not based on the square footage.

MR. CARLEBACH: There's no testimony about square footage.

THE COURT: Right.

MR. CARLEBACH: He had a witness here.

THE COURT: Right.

MR. CARLEBACH: She wouldn't let the appraiser in. She doesn't want to testify. Now Mr. Portilla's going to talk about what's going on.

THE COURT: Right. Right. I don't know what the square -- I'm not understanding the square footage as being relevant here unless somebody wants to show me some law that reflects that it is.

MR. PORTILLA: My -- the point that I'm trying to get across is that if that particular apartment was renovated --

THE COURT: But it isn't. It isn't. It hasn't been. We have no evidence that it has been. Right?

MR. PORTILLA: Not on the record, Your Honor.

THE COURT: Okay. And the possibility that the future owner would make renovations is not something we would take into consideration in figuring the value now as far as I understand it.

MR. CARLEBACH: Your Honor made the right point. You have to make a downward adjustment for the capital improvement that --

THE COURT: It might not be a dollar to dollar -- dollar for dollar downward adjustment. But there'd be some adjustment. There's been no testimony about that. So, okay, I have no other questions unless anybody has anything else. Okay. So I will take this under advisement and you can submit your additional information about --

MR. CARLEBACH: The claim.

THE COURT: -- the claim. Okay?

MR. CARLEBACH: Thank you, Your Honor.

MR. PORTILLA: Thank you, Your Honor.

THE COURT: Yes. And did I give you -- I gave you what, three weeks to do that, Mr. Carlebach?

MR. CARLEBACH: I think you said two weeks.

THE COURT: Two weeks, okay.

MR. CARLEBACH: Yeah, if we want to -- you know, it should be -- again, the only variable is me being dependent on Mr. Miller of the Westerman firm, you know, sometimes and whether or not he's going to give me an issue on attorney/client privilege or something like that. I don't know.

THE COURT: Well, I'm going to assume that you'll file this let's say by March 1. Well, that's not quite two weeks. Well, let's say March 4. If there is -- and I'm not going to -- the record, as far as I'm concerned is not complete until I receive that submission.

MR. CARLEBACH: Okay.

THE COURT: Okay.

MR. CARLEBACH: If there's an issue, I'll -- we'll take it up with the Court.

THE COURT: Okay. Is there anything that you want to, you know -- I'm just trying -- I don't think I'm going to need any further submission from you on this, but if there's something you want to submit, I'll give -- you can file it a week after Mr. Carlebach files his --

MR. PORTILLA: In relation to the claim?

THE COURT: Correct.

MR. PORTILLA: Thank you. So a week after March 4th?

THE COURT: Correct, which would be March 11th. But

I am not expecting to hear new -- there's no new evidence here. If there's something you want to point out to me about his submission, I'll see it but no, you know --

MR. PORTILLA: It'll be a response, essentially.

THE COURT: It'll be a response, right. Okay. All right. Thank you. Thank you.

MR. CARLEBACH: I don't even want to talk about a reply but we'll see what we get from Mr. Portilla.

THE COURT: I don't think I need it. I appreciate it, but I don't think I need it. Yes?

MS. WEINBERGER: Your Honor, with respect to status on the case?

THE COURT: Yes.

MS. WEINBERGER: The Debtor owes the Court the monthly operating report for 2015, December 2015 and also owes $327 for the fourth quarter of 2015.

THE COURT: Okay.

MS. WEINBERGER: So I appreciate that (indiscern.).

THE COURT: Okay, so get your client -- your client needs to get up to date with that.

MR. PORTILLA: Yeah, (indiscern.) December operating reports. I'll look at that very shortly.

THE COURT: Okay.

MS. WEIN: Thank you so much. Thank you.

THE COURT: Okay. What about the Lift Stay Motion, where does that -- what are we doing with that right now? I guess we're -- would that -- that is probably -- you got your adequate protection payment?

MR. CARLEBACH: We got the adequate protection. Thank you for that. With respect to the Lift Stay, I know there were a number of payments that were made. I'm being told by my client now that January and February has not been paid. I would just ask to carry the Motion until --

THE COURT: January and February has --

MR. CARLEBACH: Rent by the Debtor has not been paid. The Motion was based -- she had stopped paying rent sometime back in July. That was the basis for the Motion. I think she made up about five payments. That was the U.S. Trustee issue had with that check that she deposited. But apparently she stopped paying again, so I don't -- that wasn't the basis of the original Motion, but I would like to, you know, give Mr. Portilla an opportunity to bring that current as well. We're not here to evict the Debtor. We would just like her to stay current. You know, we heard about the -- she's being charged $1,000 a month for this huge apartment. So she should pay that, you know, and --

MR. PORTILLA: As you know, Your Honor, my client is unemployed. She relies on her daughters for income. I will speak to my client and we'll get up -- we'll get those rental (indiscern.) up to date. And you know what, I also want some clarity in regards to the adequate protection payments of 28,000. Will that be reflected on the payoff -- total payoff amount? Will essentially the payoff be reduced by $28,000?

THE COURT: It would have to be, right?

MR. CARLEBACH: It's a good point.

THE COURT: It would have to be.

MR. CARLEBACH: Yeah. I mean, to the extent that that's -- those are mortgage payments, yes.

THE COURT: Well, that -- what else are they?

MR. CARLEBACH: We had actually asked for ongoing adequate protection payments, but I didn't press the point and we'll, like I say, hopefully we can resolve the case relatively -- soon and it'll be a non-issue. It's (indiscern.) because it either raises the payoff or it reduces it. But --

THE COURT: Okay, so I'm going to give you April 20th for the next status conference at 3 o'clock. Hopefully I'll have -- this will be decided by then.

MR. CARLEBACH: April 20th at what time?

THE COURT: Three o'clock.

MR. CARLEBACH: Three o'clock. That's not Passover, is it?

THE COURT: When is Passover? Let me just to see when Passover is.

MR. CARLEBACH: The first night is the 24th. So we're good, okay.

THE COURT: Okay, it's before Passover. Okay. Yes, it starts on a Friday.

MR. PORTILLA: What time, Your Honor?

THE COURT: Three o'clock.

THE CLERK: All rise.

(Court adjourned)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Lewis Parham 2/26/16

Signature of Transcriber Date